

MINISTRY OF TRANSPORT.

SOUTHAMPTON
UNIVERSITY
Parliamentary

RATES ADVISORY COMMITTEE.

GENERAL REVISION

OF

RAILWAY RATES AND CHARGES.

PROCEEDINGS OF MEETING

HELD ON

15TH JUNE, 1920.

THIRTEENTH DAY.



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MINISTRY OF TRANSPORT.

GENERAL REVISION OF RAILWAY RATES, TOLLS AND CHARGES.

OLD HALL, LINCOLN'S INN, W.C.2.

Tuesday, 11th May, 1920.

Terms of Reference:—

"The Minister having determined that a complete revision of the rates, fares, dues, tolls and other charges on the railways of the United Kingdom is necessary, the Committee are desired to advise and report at the earliest practicable date as to:—

- "(1) The principles which should govern the fixing of tolls, rates and charges for the carriage of merchandise by freight and passenger train and for other services.
 - "(2) The classification of merchandise traffic, and the particular rates, charges and tolls to be charged thereon and for the services rendered by the Railways.
 - "(3) The rates and charges to be charged for parcels, perishable merchandise and other traffic conveyed by passenger train, or similar service, including special services in connection with such traffic."
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MINISTRY OF TRANSPORT.

RATES ADVISORY COMMITTEE.

GENERAL REVISION OF RATES AND RAILWAY CHARGES.

PROCEEDINGS OF MEETING

HELD ON

15TH JUNE, 1920.

PRESENT :—

F. GORE-BROWNE, Esq., K.C. (*Chairman*).
SIR WALTER W. BERRY, K.B.E.
W. J. DAVIS, Esq.
W. A. JEPSON, Esq.
L. A. MARTIN, Esq.
W. M. ACWORTH, Esq.
S. J. PAGE, Esq. (*Secretary*).

THIRTEENTH DAY.

MR. J. H. BALFOUR BROWNE, K.C., appeared for The Federation of British Industries.

SIR JOHN SIMON, K.C., SIR LYNDEN MACASSEY, K.C., MR. BARRINGTON WARD, K.C., and MR. BRUCE THOMAS appeared for the Railway Companies' Association.

MR. ROWLAND WHITEHEAD, K.C., and MR. G. W. BAILEY appeared for the St. Helens and Widnes Manufacturers and Traders.

MR. ROWLAND WHITEHEAD, K.C., and MR. EDWIN CLEMENTS appeared for the Iron and Steel Federation.

MR. G. H. HEAD appeared for the Livestock Traders' Association (instructed by Messrs. Maxwell, Brownjohn & Co.).

MR. JACQUES ABADY (instructed by Sir Thomas Ratcliffe-Ellis) appeared for the Mining Association of Great Britain.

SIR ROBERT ASKE (instructed by Messrs. Botterell & Roche and Hill Dickinson & Co.) appeared

for the Chamber of Shipping of the United Kingdom and Liverpool Steamship Owners' Association.

MR. F. G. THOMAS (instructed by Messrs. Francis & Calder) appeared for the Association of British Chambers of Commerce.

MR. W. A. WARDLEY (instructed by Messrs. Adler & Perowne) appeared for the Association of Railways.

MR. EDWIN CLEMENTS also appeared for the Mansion House Association on Railway and Canal Traffic.

MR. JACQUES ABADY (instructed by Messrs. White and Leonard) appeared for the Federated Home-Grown Timber Merchants' Associations.

MR. F. D. MORTON (instructed by Messrs. Bower, Cotton and Bower) appeared for the London Central Markets' Association.

MR. A. MOON (instructed by Bernard Wicks, agent for Mr. H. A. Sanders, Chesterfield) appeared for the Association of Smaller Railway Companies.

SIR ALEXANDER KAYE BUTHERWORTH, recalled.

4321. *Chairman*: In giving your evidence, Sir Alexander, you said something about the question of the graduation and the tapering of rates. There is one matter on which I would like to know the opinion of the railway companies and of the traders which is involved in that. When we were inquiring in regard to the temporary addition of railway rates last autumn we were told that the railway companies find that the least remunerative part of their business is the short hauls, and they find, as I understand also, that the increased expense due to recent events is even greater proportionally in connexion with short hauls than with long hauls. On that occasion of the temporary increase we fixed a flat rate as well as a percentage addition; and the reason for the flat rate was definitely connected with the greater expense of short hauls and of long hauls—

greater relative expense. Some people think that that had to do only with terminals. They are mistaken there. That was not the only matter that we had in mind in putting on the flat rate addition. But it will become an essential part of the new revision to distinguish between the goods hauled a short distance and those hauled a long distance. Now, the taper, of course, aims at that. I would like to know from the railway companies whether they think that that can be wholly dealt with by a tapering rate—which, of course, also involves a minimum distance charge—or whether there ought to be a flat rate; and how, if they are to be both, they should be combined; or if it is only to be by the taper what sort of proportion of the charge ought to be put on the first and short distance?—May I ask a question on that and say how your question

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[Continued.]

strikes me at the moment? From one point of view is it not merely a question of arithmetic? That flat rate addition of 3d. could as a matter of arithmetic easily be put into a minimum distance or into a scale, and therefore it merely becomes a mere question of convenience. I take it your question involves another consideration altogether which is one of substance—namely, whether the new burden imposed by the increased cost should be put on in a larger proportion on the short distance traffic than on the long. That is a matter of substance.

4322. Those questions are involved, and we should want help on the first question as to which is the most convenient practically; and upon the second question we should want to know in what proportion the greater amount should be put on the short haul?—I have general ideas on the subject in my own mind, but I would suggest that you would get it much more accurately and satisfactorily if you let one of our goods managers, when they come to give evidence next week, take that up as a definite point.

You have made very clear what you want from us. 4323. If the proper person to do so will give instructions that there may be materials brought before us to enable us to come to a decision on that point. On many points you have spoken of difficulties and uncertainties and have left the matter open; we shall have to be definite; therefore we want to be given the materials upon which we may give a decision, whether it agrees with all you say or not, of course?—I hope you will give me credit for having in my own mind drawn a distinction between two classes of question: those questions on which I was not able to give you a satisfactory answer, and, secondly, some questions upon which I am afraid it will be very difficult for anyone at this stage to give you a decided answer.

4324. True. On the other hand, we shall have to be definite when we come to give our advice?—I have made a careful note of all the points that I have deliberately left over for other witnesses who will have an opportunity of looking into them which I have not had, and who also from practical knowledge could give you the more useful evidence.

4325. What I am concerned with is that the point should not be overlooked?—It arises on the table you gave us earlier in the case. If we say we cannot give you any improvement on those figures, that really answers your question I think.

4326. *Mr. Acworth*: I want to get this clear. As I understand it, those flat additions were intended to cover what I may call the costs that were practically terminal, though in law they were included in the conveyance rate?—I dare say that was so. I thought your Committee was responsible for that.

4327. The Committee was responsible in the sense that it was a recommendation and it was accepted. But see whether you agree with me. The conveyance rate, as I understand it, legally has included what you call marshalling (so to speak) for the convenience of organising your own trade?—A certain amount of marshalling will of course come into conveyance.

4328. Station terminal was supposed to cover whatever is done (so to speak) in the station, but marshalling in a yard perhaps ten miles off is included in the conveyance rate?—My recollection was—

4329. Legally I mean?—My recollection was that service some little distance from the actual ware-house came within the station terminal. I am a little rusty on these cases, but that was my recollection. Someone else here will know much better than I do.

4330. *Mr. Jepson*: That has been held by the Railway and Canal Commission Court, especially with regard to services which are not performed at the private siding?—Yes.

4331. *Mr. Acworth*: That is another story. My point is, speaking economically and not legally, how far this flat rate addition is really an addition to a terminal?—If you mean by this are there services, or are there costs—which perhaps is the better way of putting it—outside what are technically included in service terminal or station terminal that do not vary with distance, undoubtedly.

4332. That is my point?—One would give you a good illustration, I think; at least it seems to me a sound illustration. Someone will put me right if I am wrong, however. I was thinking of the waste time of an engine. However, never mind about the illustrations; there are some such costs, I am sure.

4333. You see my point; if you are going to re-cast the whole thing let us understand whether we are logical?—Yes.

Mr. Jepson: As I understand it, the reason for the Rates Advisory Committee recommending a flat rate was this. There were certain services of the railway companies that were constant whether the traffic was carried for a longer or for a shorter distance, and it was felt that if the whole of the additional revenue were raised by a percentage the longer distance traffic, by reason of the fact that it was charged at a higher rate, would be bearing a disproportionate share of those constant expenses; and therefore the Committee in their wisdom recommended that as well as a percentage there should be a flat rate addition which would apply to short distance traffic and to long distance traffic alike, and it was thought that would be a more equitable adjustment of the burden.

4334. *Chairman*: I do not suppose that Sir Alexander can answer what is in the minds of the Committee, and I do not think that we ourselves ought to say what was in their minds. But he may say there are certain constants which are outside terminals?—Yes, that is all I can say. I was not closely in touch with what went on at that time.

Sir John Simon: You said just now, Sir, you would wish for some material. I follow, of course, that your desire would be to have assistance in the most definite and matter of fact shape.

Chairman: Certainly.

Sir John Simon: Those behind me who will have to take this particular matter in hand, since Sir Alexander says it had better be left to the Goods Managers, want to be clear what you would wish would be their considered advice as to the extent to which this should be done, which probably will be based on a number of considerations, but you do not want them to argue it but to tell you the result.

Chairman: Yes, tell us the result; and if anyone challenges it they may be asked their reasons. Now, we have seen in to-day's papers that Sir Eric Geddes said last night in the House that he would have to consult this Committee with regard to an interim increase of rates as the result of the present rise in expenses. That particular question we have been speaking of will come into that again. When we come to consider it we shall have to ask ourselves should we increase the flat rate or put on percentages or what else. Therefore it would help us.

Sir John Simon: It may, of course, be useful for other purposes, but certainly it would be useful for that immediate purpose.

Sir Walter Berry: With regard to the proposals I understand you have put forward of terminals being charged at private sidings as though they were stations—

Chairman: Station terminals, not service terminals.

Sir Walter Berry: Yes. I want to point this out to you. At the present time in agriculture two things are happening. Small holdings are being established with a view of putting many men on the land and hoping to make the most of small plots of land. On the other hand, economical working is opening the eyes of agriculturists as to the necessity of larger areas being farmed more cheaply and sidings from the railways being put into big holdings. Do I understand that your proposal is that if such a siding could be put into a considerable-sized farm or market garden you would still claim, speaking with the weight you do for the companies, that siding must pay the same terminals as though the people used your town station, bearing in mind that a considerable portion of that traffic would be the manure going in, and hay and straw and vegetables, and roots for cattle feeding, and so on, going outwards. It is a point which is of some importance, and I thought, after what had happened in the conversations here last week, that you may have modified

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your views. If you have done so I should like to know.

Witness: No, I do not think I personally have modified my views, and I do not think that I in any way misrepresented the views of those on whose behalf I speak. In the sort of case you put we do not see why the traffic that would be dealt with at that siding should not pay the same rate as similar traffic—be it manure or be it roots or straw—dealt with at the nearest station. One item, of course, would obviously be saved by the trader, and that is one of the considerations that as a rule help to determine him in deciding whether to ask for a private siding or not, and that is cartage. That is entirely saved, obviously. If he uses the station the roots, or the manure, or the straw would have to be carted to the station. That would be not charged, and it is proposed to deal with cartage in a way that, as you know, would make it impossible for any question to be raised; but, so far as the rest of the rate goes, assuming—as I think I may in the case you put to me—that is traffic that we are quite prepared to deal with at our station, but that the farmers with a general view to economy or efficiency desire to deal with that at a siding, that if they do so anything except the cartage they should pay us for just as anyone else.

Unless that is done I do not see how we shall get a return on our station capital. Supposing these farmers, as I suppose they have done in the past, have been using our station, and it is from their traffic, in common with other traffic, that we get our return on the capital we have expended on our station—if that is all taken away from a station and dealt with at a siding I do not see where we get our return. Moreover, as you know, we are put to a number of expenses in connection with siding traffic that we do not incur in the case of a station. I do not think the idea is as novel as some people seem to think. I think if you made inquiries—Mr. Acworth would be able to tell you—about America you would find the almost universal rule is that the siding owner pays the station rate. As a matter of fact, I am not sure that the Chairman did not refer to it in the earlier part of the Inquiry. When you have to do something extra at the siding a switch rate is paid on top, I understood.

4355. *Mr. Acworth:* In America there is no separate terminal?—No. Therefore it would make it all the more difficult; they would have to build up a rebate law, which, our separate quotation has made very easy for the Courts.

4356. *Sir Walter Berry:* I was going to add this: Do you realise what this really means? I have several goods yards in my mind which were built some years ago, and if the traffic such as I suggest—and other siding traffic of which one knows a good deal—had to be carried on at that station, would it be possible; do you want this manure in and out of your goods yards? Do the town authorities want this material hauled through their streets? Is it not reasonable to say that every facility should be given for establishing sidings to assist you in getting rid of this kind of traffic outside your stations, and also to assist the country to build up such a necessary industry?—The better way of meeting it would be by a special set of rates for manure rather than dealing with it by a rebate off the rate.

Sir Walter Berry: We have that now.

Sir John Simon: I do not know whether Sir Walter would allow me to mention this point which may be present to his mind and no doubt to Sir Alexander's. If I follow it rightly, as things stand now a railway company would be entitled to charge whatever was a reasonable sum for services rendered at or in connection with the siding.

Sir Walter Berry: But not station terminal.

Sir John Simon: May I point this out. If you take manure, which I think is Class B, the maximum station terminal—

Sir Walter Berry: It is B and C.

Sir John Simon: A or B?

Sir Walter Berry: B and C.

Sir John Simon: Let me take an example. It is a general point and does not turn on a particular letter of the alphabet. If it is in Class B—as I think it sometimes is—the maximum station terminal is 6d.; and I do not think it would be a very difficult thing for a railway company to make up its bill for services rendered at or in connexion with a siding of that sort—engine power, clerkage, shunting, to the amount of 6d. And the proposal, as I follow, is not that the railway companies should charge it twice over but that you should make a clean cut of it and say it is as broad as it is long.

Witness: If we get an average figure I think we should be content with that.

Sir John Simon: Sir Walter seemed to be putting it as though what the railway company was proposing was to make some extra charge over and above what they make now. As a matter of fact, the railway company, if it is put to it, could easily show that services at or in connexion with the siding are more than equivalent to a small station terminal of that sort.

Mr. Jepson: That raises another question. It has been the practice of the railway company in the past to make private siding rebates by agreement with the owner of the siding. There are thousands of those cases about the country. Is it suggested by the railway companies that all those are to be abolished in the future and that in place of an agreed allowance the parties should get no allowance whatever and have to pay the station rates, or did I understand Sir Alexander to say that the heading he was going to put in when he disintegrated the rates or showed what was the charge for the service and accommodation at the sidings, was to be “unless otherwise agreed”?

Witness: I think it was Sir John who gave the words for the heading. But obviously I think those words would imply it.

4357. *Sir John Simon:* I rather understood that was the intention?—I think so.

4358. *Mr. Jepson:* “Unless otherwise agreed”?—I think so.

4359. There are scores of agreements in the country where certain arrangements are set out?—Yes; and are not those based on rather a different idea; are not those based, as some witness put with regard to Middlesbrough, that we could not carry the Middlesbrough traffic at our station, and our rates there are built up on that assumption. You will find they are all on a low basis. If we are not able to deal with the traffic or did not want to deal with the traffic, or if the trader distinctly saves us money by relieving us of his traffic, then it seems to me an agreed deduction from the rate would be a perfectly reasonable way of meeting it. We do not wish to tie our hands or to tie the hands of the traders to make that impossible in the future as it has been in the past.

4360. *Sir Walter Berry:* I hoped you would realise that you would save your money enormously by allowing business people to do it at their own sidings, so that you would give them facilities rather than put extra difficulties in their way?—That certainly was not our intention. What we had in our minds—it was put there by what was put forward by the other side, the desirability of getting the greatest possible amount of dissection of rates in the rate-book quotations—that put one on one's guard; what was that for? And one could only come to the conclusion that it was that the traders were out to get a larger differentiation between those who owned sidings and those who owned stations. That we are against. We think that is sufficiently differentiated at the present time. Then we bring to our own knowledge certain rebate cases where the whole Inquiry is of a fantastic and unreal and unbusiness-like character. We think we ought to be spared that. But where it is in the general interest that the traffic should be dealt with at a siding and the railway company have not put themselves to the

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expense of providing at a station, I think a different set of considerations comes into force.

4341. *Mr. Acworth*: Your broad position, as I understand it, is normally the cost of the siding ought to be regarded as equivalent to the station terminal charge?—Yes, broadly speaking.

4342. If there are cases where a trader by agreement has got something less, you are prepared to preserve it?—Yes, generally. I think those would all want reviewing.

4343. Yes. And on the other hand if there are cases where on a review of the particular facts, you could establish the fact that it cost more to you to put the stuff into a siding than to deal with it at the station, you would forego the claim to establish that extra charge?—If you put that to me I am afraid I must, to give a perfectly frank answer, say that one has not got quite so far as that. May I put it as it strikes me at the moment? If we want to reserve a right to charge something extra because a siding is particularly expensive, I do not see how we can get off the corresponding obligation that if there are particularly favourable circumstances with regard to a siding there should be a differentiation that way. But if we get to that point, then it gets to the point of seeing whether we cannot get some scheme that would be mutually acceptable—both sides putting their heads together to see the best way of meeting it. But one cannot avoid saying “Yes” to what is in your mind. However, we want to get away from this over-elaboration, as we think, on the question of cost. As I said the other day, in point of fact there is no more difference in cost between two sidings, or a siding, and a station, than there is between two stations; and if you are as exact as all that between two bits of line you get to the point as between different individuals or different stations where you cannot over-elaborate cost. If you want to be so logical you ought to fix (as it were) a different mileage conveyance rate for every mile of line. That has often been drawn attention to. I remember our old General Manager putting it exactly that way 30 years ago. He said, “We can get an average figure; but if you want to differentiate in that minute way there is logically no end to it.”

4344. Then it comes broadly to this, that your real point is that it ought to be assumed, in the absence of proof one way or the other, that the siding cost and the station cost is equivalent?—Yes, I think you have put it as shortly as you can. If that is the assumption from which we start we can settle the details.

4345. You claim the right to have it in your favour as well as the traders?—Yes; and we think it would be in the general interest.

4346. I am not differing from you; I only want to get quite clear what is in your mind?—Yes.

4347. *Chairman*: That leaves it open for negotiation in any case where the trader or company desire that something different from the station terminal should be charged to the siding?—Yes.

4348. But *primâ facie* it is to be treated that the station terminal and the siding charge are the same?—Yes. Of course, it would hardly be fair to pretend that that exhausts the problem; because there is the possibility of the negotiation not ending satisfactorily.

4349. Then I am afraid there would be reference to an arbitrator or a tribunal?—Unless you lay down some principle your old problem begins. That is what Parliament did—if I may say so without being disrespectful—in a most cowardly way by the Act of 1894. They passed that mysterious section, about which I thought Mr. Balfour Browne would cross-examine me, and at which I hope you will look. It is a section I have not understood.

4350. *Sir John Simon*: You mean Section 4?—They say if there is a dispute about a siding the Commissioners might hear it. I never thought that it was any different. But on that Parliament does not make any suggestion. It reminds me of the saying of Pope, “Willing to wound but afraid to strike.” It looks as if someone wanted to have his knife into the railway companies but had not the courage of his convictions. It is a curious section, and it has made a lot of trouble, and worked very badly, I think.

4351. *Chairman*: You have left it, *primâ facie*: station terminal, siding payment, equal; if the circumstances are such that they are not equal, negotiation; if negotiation fails, someone to decide. Now we want you to take your courage in your hands and say on what basis?—If I may so, I think it should be approached from rather a broader point of view than that. I would say that the assumption which Mr. Acworth put to me should be one on which it was understood you acted. I think that, to entitle a trader to come to any arbitrator in default of a satisfactory settlement through negotiation, he ought to be able to show something a good deal more than some minute difference in cost; I think he ought to be able to show on broad lines either that you have not laid your station out for his traffic, that you are not prepared to deal with it and could not deal with it, and therefore you could not fairly ask him to contribute anything towards a station which really was not available for him; or, alternatively, I think that he should prove there was some substantial saving to you in his action. I think you want to get it on a different basis. If you could get some broad lines proved by the trader that the station was not really available for him or that there was some substantial saving to you by his not sending his traffic to you, then I think you might introduce some arbitration proceedings. But I think there should be something of the kind shown in the first instance. May I, if I am not dwelling too long upon it, refer you once more to those judgments in the 80's where you will see the basis of the arguing of those Commissioners, who had evidently given a great deal of thought to the matter, all on the ground of undue preference. Evidently they knew of no basis of rebate except undue preference; there is no rebate law, you have to pick it up; it is a tree of most mysterious growth. But they evidently based it on undue preference. What they said was, “We do not see how there can be undue preference if the same offer is made to everyone.” If you have a station where you are not dealing with a man's traffic you are not making the offer. I think there you would get a sound ground for discrimination. I do not know whether I have made myself clear.

4352. Yes, I think so.—I would not like to be thought to be advocating what is merely a return to the old thing of minute discrimination between the actual cost of the station traffic or some sub-division of the rate on the one hand, and the actual cost of the particular traffic at that particular station on the other. I think that is the vice of the present situation.

4353. *Mr. Acworth*: Provided the arbitrator in so-and-so shall take account of so-and-so, would that be difficult to draft?—I think it would be possible to draft a clause on the lines I am suggesting; and perhaps we ought to set our minds to do that.

4354. *Mr. Martin*: May I take an instance, a works with railway lines running into them? Those works, of course, have private sidings. They load and sheet, and so on, on their own sidings and by arrangement. Very often sidings differ in circumstances, and then it is a matter of negotiation between the railway company and the trader what rate the trader is entitled to for the services he does which would otherwise be performed by the railway company. That is the basis of the present agreements I believe. Then, further than that, at the present time suppose the rates are for C and D—I am talking about the London district—the trader gets not the full allowance for collecting which is charged on the rate; he gets a lesser amount; but under the system of making conveyance rates only the trader would be better off to the extent that he would have a better allowance for his cartage, or, rather, no cartage would be charged to him, so that he will really be in a better position?—I think Mr. Jepson pointed out the other day that by making cartage a separate charge we are undoubtedly giving up that difference which exists to-day between what you may call charge and rebate.

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[Continued.]

4355. Therefore if the other part remains the same, taking the circumstances into consideration, the trader is entitled to a rebate for the services he does which the railway company would have to do, then he is entitled to make an arrangement with the railway company on the best possible terms for that?—Yes, I think so; and I think on that, if I may say so, if we did not agree we ought to go to someone; because those would really be what we call service terminals, loading and unloading. As I said the other day, a great many of these rates—I am inclined to think the bulk of the rates—where the siding rebate question might arise, are quoted without the service of loading; but where either carting or loading and unloading are included in the rate—as regards cartage our own proposal will give the trader automatically the full allowance of that, so by getting his siding he immediately loses cartage; and with regard

to loading and unloading, if that is included in the rate—if someone thinks otherwise they will say so afterwards—but at the moment I do not see how we can claim to charge for the loading and unloading of which the trader is relieving us. I think in the class of case of which you are thinking the cartage and the loading and unloading, and putting on the sheets as well, will account for most of the rebate. In the actual negotiations there is a small point on the service terminal; to-day it includes the provision of the sheet as well as putting it on. That is a question I think when the goods managers come it would be well to have cleared up. It is not very clear why the provision of the sheet comes into a service terminal. It is not like one of those things which does not vary with the distance—as it does vary—like the provision of the truck.

Cross-examined by Mr. ROWLAND WHITEHEAD.

4356. Can you carry your mind back to that pig iron diagram?—I will try to do so.

4357. I will recall it to you if I can. You had on that diagram a line—the details do not matter—which affected to represent a kind of standard tariff?—Yes, the violet line.

4358. Apart from that there were a large number of dots which represented the actual pig-iron rates which had been in use in a particular week in question?—That is so.

4359. Those dots being in the main a long way distant from a standard line?—Varying distances, from very near to the line to a considerable distance off.

4360. Yes. I want to discuss with you how far it is possible to get a tariff scale for the exceptional rates dealing with pig-iron. I will take that as an illustration. First of all, do you think it is desirable to aim at getting a standard tariff of that kind for exceptional classes of traffic—apart from the question as to whether it is practicable or not?—You are approaching a very difficult part of the Inquiry, therefore excuse me if I am particularly careful in the answers I give. You say as regards exceptional classes of traffic?

4361. I will take pig-iron as an illustration.—Pig-iron is not an exceptional thing, it is one of the most common forms of traffic. We must be clear what we mean by speaking of an exceptional class of traffic. You mean a class of traffic which to-day is much more frequently carried at some special quotation than a class rate?

4362. Yes. Now apart from the question of whether it is practicable to do it, do you think it is desirable to aim at getting something like a graduated mileage scale to form a standard tariff for traffic of that character?—Quite apart from practicability I think I must say "Yes."

4363. I want to discuss with you whether it can be done. I understand you to say?—Mind you, in practicability I include satisfying our customers. In practicability, I include that element, that fact—that will satisfy our customers.

4364. I am sure you do. You said it could be done up to a certain point. I want to see whether we can get at something practicable. We have very large interests at stake?—Yes.

4365. Very large railway interests and very large business interests?—Yes.

4366. This has to be viewed as an important and practical business problem?—I agree entirely with what you say.

4367. Would it be possible, before this Committee meets to deal with the second part of the Inquiry, for the railway companies and those connected with the iron and steel trade to meet together to see whether it is practicable to thrash out a standard tariff for the iron and steel rates? I understand you said to the Committee the other day that first of all you have to ascertain which were those excep-

tional exceptional rates which ought to be preserved in any event. That was the first problem, I understood you to say, before you could get at a tariff?—You asked me whether we could meet—

4368. The representatives of the iron and steel trade, with a view of thrashing out the problem of actual rates?—An actual tariff.

4369. Yes?—I will tell you what answer I was going to give to that if that was put to me as General Manager of the North-Eastern. With regard to the North-Eastern, suppose we were doing it by ourselves, I should answer you in the affirmative, and I do not see why I ought to give a different answer for the companies generally.

4370. It is agreed between us that there are certain exceptional exceptional rates which ought to stand good by reason of the trade conditions which prevail? Yes, but of course my uncertainty there would be that at this meeting with the traders, I should be very much in the dark what the attitude of the traders who were nearer the line would be as regards the preservation or maintenance of those exceptional dots that were a long way from the line. I should not know what to expect them to say about it.

4371. We can all see difficulties, and it is a difficult problem.—Very difficult.

4372. A very difficult practical problem, and we can magnify or elaborate difficulties if we wish to, but is not it desirable in the interest of this Committee, and business too, railway business as well as iron business, to see whether some definite formulated tariff or scale could not be arrived at between those whom I represent and the railway companies?—Yes, I should think that is a very practical step to take, to see whether there is any chance of agreement before you go to a Tribunal to settle your differences.

4373. Let us take it one step further. Of course in the main the facts relative to this matter, that is to say the iron and steel rates as a whole which have to be compounded into a scale if possible, are in the possession of the railway companies rather than of the traders, are not they?—Yes, they can be got by an examination of the rate books at the iron sending stations.

4374. Each trader or each group of traders can criticise a particular part, but the thing as a whole is more or less in the hands of the railway company?—Yes.

4375. Would it be possible for the railway companies to evolve within a reasonable time some scheme which they could submit to the iron and steel people for consideration and have a subsequent conference with a view of seeing whether this thing was practicable or not?—I think you hit the nail on the head entirely by the words, "in a reasonable time." In some time undoubtedly it could be done. The process necessarily is this, we must necessarily get out our rates just as we did on that diagram, not for one station but for all the sending stations. We must then follow that up by the amount of traffic

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and the distances, the different tonnages past, and we must in that way get for a period a sum of gross revenue. When we have got that it is a question how you can distribute that differently by a uniform line or curve. When that has been done, when we were in a position to say, "Now that line would give us a revenue we are getting to-day," then we should be in a position to say to the traders, "Would that be a satisfactory line to the trade?" Do I make myself clear?

4376. The course I am indicating is, is it not, the route along which we must travel if we are to arrive at something practical to put before the Committee?—Yes, I was trying to indicate them. I am not contradicting you in any way.

4377. I thought we were in agreement. It is a difficult problem. It has to be faced very soon in this practical way by the parties meeting and discussing the actual facts?—It is not necessary to meet in that way. We might both come without having met before the tribunal and put our proposals forward in the ordinary way, but I thought you were asking me rather to accept the position that a more businesslike method would be to let you see our proposal, that is to say, our figures before we submitted them to the tribunal.

4378. You agree that would be a very practical way of working it?—I gave the answer I would rather repeat at the beginning.

4379. With regard to the future, after this Committee has reported and adopted, we will say, a standard, there will still, will there not, be exceptional cases where what I may call exceptional exceptional rates will have to be adopted?—Yes. That leads to the difficulty we must not lose sight of, I think I drew attention to last week, that until you have got that, which you put as a subsequent question, finally disposed of, you cannot settle the first question.

4380. I quite remember your saying that, but I am now on a different point. I am dealing with the future. Suppose you have your new standard tariff and below that certain exceptional rates which ought not to come or cannot come within the tariff?—That is all agreed and settled.

4381. That is the present. You translate the existing state of things into a scheme which contains a tariff line and some exceptional rates which are below it?—You assume that is all settled by Parliament.

4382. Yes, assume that is all settled. In the future will not it again happen that exceptional rates will have to be fixed in order to meet the exigencies of trade?—We think so.

4383. Do you agree that it is desirable that those rates as in the past should be a matter as far as possible of negotiation and agreement with the traders concerned and should then be put into force by the railway companies, that is to say, instead of as suggested the matter should be referred to a tribunal to fix the rates?—Yes, we would prefer that they were fixed between the individual company or companies and the individual trader concerned.

Mr. Martin: Suppose they disagreed. Suppose you could not come to terms?

Mr. Rowland Whitehead: Then I suppose we should have got to a tribunal, but it is a question of procedure as Sir Alexander said the other day.

Sir John Simon: I would like to follow the order of things in my friend's suggestion, the point is a very important one. Assume that one has the tariff settled; assume that one has got an agreement as to what are the exceptional exceptional cases to start with, which are outside and below the tariff; then assume that the trader asks, perhaps a new trader or an old trader in new circumstances, the railway company to agree a new exceptional exceptional rate for him. Is it suggested that if the railway company and the trader do not agree—of course the railway company is willing to quote on a tariff line—that the new trader should go to some tribunal and

say: "I want to be below the tariff line and get an exceptional exceptional rate?"

Mr. Rowland Whitehead: I will put that.

Sir John Simon: Is that the proposal?

Mr. Rowland Whitehead: Yes.

Sir John Simon: I want to know.

Chairman: Do you put that forward on behalf of the iron and steel industry?

Mr. Rowland Whitehead: It is not part of my case. My case was not to have a tribunal to refer rates to at all, but to come to an agreement with the railway companies as in the past.

Chairman: I do not suppose anybody would ask to have a tribunal to fix rates below the tariff, and I do not think anybody has suggested that up to the present.

Mr. Rowland Whitehead: The suggestion was that some other trader might say he was damned, and he might like to step in and bring it before the tribunal.

Chairman: That is another proposal. Another trader might say it was a matter of undue preference, and that it ought not to be allowed.

Mr. Rowland Whitehead: He could go to the Commissioners and have it determined.

Mr. Martin: You do not suggest, in the case of disagreement, that the tribunal, if it is set up, will be the proper body to go to.

Mr. Rowland Whitehead: No, we do not suggest a tribunal at all; it is not part of our case.

4384. When you come to settle what is a reasonable rate in practice and in normal times, you have to have regard to the commercial necessities which will be affected by the rate?—Yes.

4385. Those necessities may be of a twofold character; they might be railway necessities due to water competition, or road competition and railway competition, or anything of that kind, or they may be trading necessities due to foreign competition which the trader has to meet or the competition with other areas—all those factors would have to be considered?—You mean when a railway manager fixes a rate?

4386. When a railway manager fixes an exceptional rate for an important traffic?—Undoubtedly.

4387. If, of course, once you can get an exceptional rate fixed, on the faith of which traders invest their capital in works and sidings, and build up a thriving industry, there are, are not there, all sorts of collateral advantages to a railway company in having that industry and the community round it to cater for?—That may very easily be the case.

4388. So that when you get a new rate once fixed, and a business established, you get new interests, so to speak—almost vested interests, if I may use that phrase—from the point of view of the trader coming into existence, and, as well as that, collateral advantages for the benefit of the railway company in carrying all sorts of other goods and passengers?—Yes, I think that, on both sides, the problem is different, in such a case, from what it is in a new trader asking for a new rate before he has started his business. It is a different problem.

4389. Suppose you get the business community established in that way and the particular circumstances which justified the low rate being put into force in the first instance pass away; suppose, for the sake of argument, water competition dies down, would you feel justified as a general manager in sweeping away the low rate on the faith of which and on the basis of which the community had grown up?—I do not think you can give a general answer to that question. I think it is easy to imagine cases where it would not be fair.

4390. Very good; I will take it in that way. Take, for example, to-day. Would you fix future rates on the basis of the present abnormal conditions—I mean permanent rates? Take, for example, the illustration which was put to a witness, of pig-iron worth £9 a ton at the present time, would you have regard to the passing value in the ever fluctuating currency of pig-iron as being a factor in determining what should be the rate over a long period of time?—Not if it is

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admittedly passing, undoubtedly. Of course, on that something must turn on the ease with which rates could afterwards be adjusted. If you have a simple machinery for afterwards altering, there is less objection then in taking into account something that may be only lasting perhaps a couple of years.

4391. If you fix the rates on the present state of things and so regard the present state of things, there must be some machinery for adjusting them when normal or semi-normal conditions again prevail?—Yes, undoubtedly.

4392. For example, at the present time in many cases, I suppose, traders are able to pass on the increased charges to their customers?—We hear on all sides that that is capable of being done to-day to a much larger extent than in normal times.

4393. I suppose when foreign competition once more revives that will not be so to the same extent?—That may not be so to the same extent.

Mr. Jepson: I was wondering if what was passing in your mind was a suggestion that rates should be fixed on a sliding scale having regard to the value of materials.

Mr. Rowland Whitehead: No, I was not making any suggestion of that kind. I think it would be a very difficult problem; it would be a new suggestion.

4394. Mr. Jepson: I do not think it would. I think Sir Alexander will tell us that for over a very long period of time the rates charged on the North Eastern were fixed according to the selling price of pig-iron over a period?—Yes, we have had for the last 40 years a large number of rates in connection with the iron-making industry fixed on that basis, a sliding scale of rates varying, as Mr. Jepson says, with the price of pig-iron.

Mr. Jepson: I thought that was in your mind, something to reproduce that.

4395. Mr. Acworth: I half thought your answer to one of Mr. Whitehead's questions was that you thought in principle that was objectionable?—No, I did not mean to say that. I understood Mr. Whitehead to say if a state of things, and he illustrated that by the price of material, was abnormal and not likely to obtain more than a very short time, would it be right to fix permanent rates on such a basis? Obviously no. What I said was the difficulty of fleetiness and the extent to which you would take such a circumstance into account would depend a good deal on the facilities you have for the varying of your rates. If your rates came up for review once a year it would be enough that those prices were likely to obtain for a year. I should not like to be taken as meaning that. If a trade is enjoying a temporary state of abnormal prosperity which you think will only last a year, I do not see why during that year, if you have appropriate machinery, that industry should not pay rather high rates, but it is undesirable to be always tinkering at your rates. You want a certain amount of permanence about them.

4396. Your iron rates vary monthly, do they not?—Quarterly.

4397. It is a fixed variation so to speak, everybody knows what it is. There is nothing arbitrary or spasmodic about it?—It works automatically, after the accounts that have to be looked at have been verified by the auditors.

4398. Do you care to express any opinion as to whether it is a good or a bad system?—It has worked very well on the North-Eastern, but I do not know whether you could extend a thing like that compulsorily to the whole country, as distin-

guished from making a voluntary arrangement on those lines on a particular railway. There is a big difference, but it has worked very well on the North-Eastern, and curiously enough, if the subject interests the tribunal—I do not think I am giving away any trade secret—at the end of 40 years we are very much where we were, that is to say, the surcharge and the rebate have just about balanced. Mind you, the higher rate has been charged during those years when the trade could afford it, and the lower rates have come into force in those years when it is a relief, but it is understood that that is the result over a long period like 40 years.

4399. Of course, it is not a thing that could be applied to a whole tariff obviously, but may we take it that after the experience of 40 years both railway companies and iron masters are satisfied it has worked fairly and advantageously?—I think so, but I do not think it is a thing you would think of setting up except by agreement with the trade.

4400. I am not arguing about that?—No North-Eastern trader would say the contrary of that.

4401. Mr. Davis: Would not that cut into a very great principle in the commercial world, that because a ton of pig iron costs £3 before the war and now costs three times as much, you should carry it for half the whole rate?—I think a system of that sort breaks down when you arrive at abnormal times. In the North-Eastern case that was partially provided for by a limit. There was a limit both above and below which you could not extend, but it would not work and does not work in the present abnormal times. You must apply it to something that is to some extent normal.

4402. I should have thought that it would have aggravated the position, traders having to pay more and still having to pay more, because the price had risen?—This was looked at from the point of view of the manufacturers who were producing the article, and the assumption was when they were able to sell their product at a higher price they were in a better position to pay a higher railway rate. Just as might obtain in the case of coal if coal had gone up to a high price, if that high price is merely brought about by high wages there is not any bigger margin for paying the railways.

4403. Assuming the vendor pays the carriage—it is not so in every case?—Does it make much difference who does the paying, it is put on the price of the article. I am not sure of that—however, those are the facts.

4404. Mr. Rowland Whitehead: I want to ask only one more question with regard to the sliding scale. Have you attempted to adopt the sliding scale for any other article than pig iron?—It applies to other articles, but all connected with the manufacture of the iron, iron-manufacturing materials.

4405. You have not pretended to adopt it generally?—I do not think we have anything else of the sort, but iron is a very big thing on the North-Eastern, of course.

4406. In the future, if the question ever goes before a tribunal to determine what is a reasonable charge, do you think that the trade considerations, such as you and I have been discussing, ought to be taken into account by the tribunal?—I do.

4407. In determining what is reasonable?—I do.
4408. If that is so, and if it is necessary, would you approve of a change in the law under which such matters might be taken into account by the tribunal?—If the present law rules them out.

Cross-examined by Mr. F. G. THOMAS.

4409. The first point upon which I wanted to ask you a few questions was with regard to the position of the proposed new tribunal. I think the position, as I understand the evidence you have given, is that while you are not as confident as we are of the advantages which are coming from the new tribunal, on behalf of the railway companies you are prepared to accept it and to do your best to make it a success?—That is so.

4410. You agree that the tribunal will have very important functions to discharge?—It all depends what functions are allotted to it.

4411. You have already indicated some very important questions of fixing rates. That is a very important question?—Yes, to a limited extent. I am afraid our considered answer has not been put in on that point. We have promised to put in a considered answer on that very point.

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Sir John Simon: That is a draft of it.

4412. *Mr. F. G. Thomas:* I will deal with it on general lines—I do not object to the general statement.

4413. At any rate I think we should be on common ground to this extent, you would desire that it should be a strong tribunal, and one in which the railway companies should feel, and the traders feel, the utmost confidence in asking for decisions upon these questions which were referred to it?—Certainly.

4414. Should I be right in assuming that in distinguishing the duties of the tribunal from the duties remaining to the Railway and Canal Commission, it would not be so much a question of importance as a question of the character of the particular issue referred. Perhaps I may illustrate that in this way. There is a certain class of dispute between railway companies and traders where, as in the case of undue preference, for instance, there is an allegation on the part of the trader that the railway company is not acting properly, not making a proper use of their statutory powers?—Yes.

4415. As I understood your position, it is this: You say where we have a case of that kind you ought to have all the safeguards which experience has shown are right for litigants when they are contesting questions of that kind, such as strict evidence, that those safeguards should continue to exist. That is what I understood you to say?—I think my words were, "Questions either important because they were big, or important because they involved a principle." A small case was not to be ruled out if it involved an important principle, but a thing might be important simply on account of its magnitude.

4416. I thought when you were indicating the character of the tribunal which we were asking for, we had rather got away from the question of importance and had come rather to the nature of the dispute which was being adjudicated upon?—No, I do not think so.

4417. I hoped we had got as far as that?—I did not mean to go away from that.

4418. What I am now putting to you is this: that there is a class of case where strict evidence and formal pleadings are necessary—that we should agree about?—Yes.

4419. There are also classes of cases, and a very wide class of case, where you agree that a less formal and a more speedy procedure is desirable?—We raise no objection to it.

4420. And it is undesirable that the same tribunal should have two distinct proceedings?—Yes, I do not think that is contemplated by anyone.

4421. May it not have been one of the reasons—I suggest this to you, Sir Alexander—why traders, I will not say lack confidence, but at any rate are reluctant to go to the Railway and Canal Commission, that the Railway and Canal Commission does apply a strict procedure to all classes of cases, not only those like undue preference which I have already indicated, but cases where you would agree that a strict procedure is unnecessary?—That may be so; I do not know.

4422. Take a case like the case of facilities which a railway company has to provide; it has been suggested that the tribunal will be the body which will fix the rates and the charges. It is very desirable, is it not, that there should not be two inquiries, that the body which has to fix the price should be the body to determine the services to be rendered?—I do not follow you. Do you mean if there is a complaint of the absence of traffic facilities?

4423. Take through rates as an example?—I think traffic facilities would indicate what I mean. If the thing was quite a small matter affecting traders at an individual station, it might quite well be that some informal procedure would meet the case, but suppose it was something—what shall we take as a very big thing?—say a Central London station, such as Mr. Gatti does advocate; that is perhaps not a very good illustration because very extensive Parliamentary powers would be necessary for that.

4424. I do not see how that would come under the Traffic Act. Take a concrete case. Take an application for a through rate. The actual fixing of the amount of the rate would be a matter for the tribunal, that is to be the rate fixing body. We are suggesting that, at any rate, I am asking you to assume that?—I do not think I should agree. I am sorry I should not give you more satisfaction, but I had not heard any discussion about through rates. If you mean a through rate between two different companies that are distinct in the future—of course, we do not know how far they will be distinct—but if you mean a through rate in that sense which is opposed by one of the two companies, I do not think that is a thing that should be taken from the Railway Commissioners. I did not know it was suggested until this minute.

4425. I am assuming a trader is asking to have a rate from point A to point B?—Passing over two groups of railways.

4426. Quite, and he is proposing that his traffic should be carried at a certain rate as between those points. There are two questions there. First of all, should the rate be given, secondly, if it is given what should be the amount of it. That is so, is it not?—Yes, that is so. The first is a traffic facility, should there be a through rate.

4427. Yes, I suggest to you, or I am asking you to assume that the fixing of the amount of the rate would be a matter which would come before the tribunal?—I think it would be rather awkward to split up the different parts of the question like that.

4428. I agree and therefore I am suggesting that the question of a through rate, or, in fact, any other facility, is a matter that should go to the tribunal?—Of course, I will answer to the best of my ability, but it has been arranged that we should give our considered answers to these questions and the document is actually in draft at the present time. The way it strikes me is that the granting of through rates is not one of the things that should be taken away from the Railway Commissioners. In the past the applications by traders for through rates have been very very few. I do not know that there have been half a dozen.

4429. More than that. Still I agree that they have been usually by one railway company?—It has generally been a question between railway companies.

4430. But they have been asked for by railway companies in the interest of traders and mutually at the instigation of traders who desire their traffic carried by that route?—Yes.

4431. I will not pursue that question?—I am sorry I have not really given thought to it.

4432. I understand that there will be some considered opinions on the part of the railway company.

Sir John Simon: Yes.

Mr. F. G. Thomas: The next point is the question of variation in rates. When you have a system of rates which have been fixed by the tribunal or fixed by the Minister of Transport on the advice of this Committee, or rates lower than those agreed between traders and the railway companies, then you will have a system of rates which at that time will be reasonable rates?—I suppose they would have to be passed by Parliament because the Minister's power over rates very soon comes to an end.

4433. I assume they will have to be passed by Parliament?—At any rate, a new set of rates in force you mean.

4434. You agree during the next few years at any rate there will be exceptional fluidity in rates, changes in one direction or another owing to the abnormal conditions from which we are emerging?—I should think so, but we have no interest in rates at the present, it is the Minister's interest entirely.

4435. Suppose the railway company desires to raise a rate. You desire to be able to anticipate the decision of the tribunal and to put in force an increase

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of rates before the tribunal has actually sanctioned it?—Yes.

4436. Would you similarly be willing to give the trader who says that this rate, although it was reasonable when I had it, is now unreasonable, and therefore I am entitled to a reduced rate, the advantage of anticipating the decision of the tribunal?—No, I do not think so.

4437. Then may I suggest that the fair thing really is that we should both forgo this advantage of anticipating the decision of the tribunal, and that rates should not be raised except by agreement between those affected or, failing agreement, by the consent of the tribunal? Is not that the fair thing to do?—I think not. I do not think that things are quite on all fours. The trader is up against an established state of things. He must make out his complaint in the same way as anyone else who brings an action against a wrong and gets it put right; but a railway company, in raising its rates in the ordinary way of business is merely doing what every other business man does, and I think should be allowed as far as possible the freedom of action that business people possess. Of course, it cannot be absolutely free, that we know; there has to be some control; but I do not think the difference between the two cases that we suggest is unfair, which is the purport of your question.

4438. What I am suggesting is that both parties should have to go before the tribunal if they cannot agree, and have the dispute settled?—I am entirely in favour of hurrying up the procedure as much as we can. I do not want to get my increased rate before the tribunal gives a decision if they can decide it quickly enough, but it is not, I think, quite fair I should be kept out of my money simply because there is a certain amount of necessary delay.

4439. Your objection is not one of principle, it is really that you want to be assured that the tribunal is in a position to deal promptly with it?—Yes, that is so.

Mr. Acworth: How can the traders agree, Mr. Thomas? I can understand the railway companies agreeing, either an individual railway company or an association, but what body is there that can possibly say, "I agree on behalf of all the customers of all the railways"?

4440. Mr. F. G. Thomas: I was thinking of an exceptional exceptional rate. I had that in my mind. I think on the question of simplification we are really at one. You recognise that a great deal in the way of simplification can be done by the addition to the scales, but that there will always remain a certain proportion of rates which have to be dealt with on exceptional lines?—That is so, and that the process is necessarily a tedious one, because it only results from a great amount of detailed work.

4441. You would deprecate altering the existing conditions more than was reasonably necessary and reasonably compensated for by the advantage and simplicity of rates?—Yes, I am not out for simplicity at any price.

4442. It may be when you have scales which recognise more fully the economy of large consignments going particularly and of longer hauls, that will enable a great number of exceptional rates to be brought into a system?—You mean a more elaborate classification?

4443. Yes.—That is all part of the same problem really.

4444. There is one class of rates which I do not think you alluded to, group rates, of which you have a great deal of experience on the North Eastern system. You would not propose, would you, to alter the system under which certain localities are grouped for the purpose of rates?—No, I think a certain amount of grouping will be necessary in any case, at least will be desirable in any case.

4445. It may be these grouping systems have been going on for a very considerable number of years and trade conditions have grown up under them, and it might be a very serious thing indeed to alter that system?—Quite.

4446. Take the Hull group and the Humber Ports under which Hull gets a very substantial advantage in its rates, that is to say it is not charged the full mileage. That is a very important matter?—Yes.

4447. You would wish when the new system of rates is established that group systems of that kind should be continued?—Speaking generally, yes.

4448. Let me ask you this as regards disintegration. As I understand it you are quite willing that the class rates—the class rates are disintegrated in any case—and that the scale should be disintegrated, but you object to—?—I am not sure what you mean by distinguishing between the class and the scale.

4449. I meant the—?—What we have called tariffs.

4450. Take grain?—We have called them tariffs.

4451. That they should be disintegrated?—Yes, in the way that we have explained.

4452. I will come to your qualification in a moment. You object, as I understand it, to disintegrating the exceptional rates?—Yes.

4453. In that, of course, you are absolutely reversing the present statutory position?—I think that must be taken to be so. If I am wrong in my law my own Counsel will put me right.

4454. I only want to get at what the proposal really is?—May I put it in this way? I imagine it to involve a change in the law and I do not hesitate to ask for a change in the law if necessary.

4455. No. but the distinction between conveyance charges and terminal charges is a distinction which is as old as the railways themselves?—Yes, the terminal history is a very curious one.

Chairman: There was the great debate in 1890 whether terminal charges were not all involved in conveyance rates. It was held that they were not.

4456. What I was going to put to you, Sir Alexander, was that, for a long period, the right of railways, when they were under their toll powers under their Acts, to charge any terminal services and terminal accommodation, in addition to conveyance charges, apart from special contract, was not allowed. —It was not admitted by the training community.

4457. There were cases, I think, in which the railway companies were unable to recover.—I think the trouble was finally set at rest in the case against the Brighton Company—Hall v. the Brighton Company.

4458. On the charging orders this distinction between terminal charges and conveyance charges runs right through the law?—In the present Acts of Parliament, of course.

4459. I wanted just to draw your attention to Section 14 of the Regulation of Railways Act of 1873. "Every railway and canal company shall keep at each of their stations"—"stations" meaning any point at which they receive traffic?—Yes.

4460. "—a book or books showing every rate for the time being charged for the carriage of traffic, other than passengers and their luggage, from that station or wharf to any place to which they book, including any rates under any special contract, and stating the distance from that station or wharf to every station, wharf, siding, or place to which any such rate is charged." So you see in the station rate book it is not only that the distance to the stations have to be stated, but the distance to the sidings?—Yes.

4461. To which the railway carry?—Yes.

4462. Then you come to the power to disintegrate. "The Commissioners may from time to time, on the application of any person interested, make orders with respect to any particular description of traffic requiring a railway or canal company to distinguish in such book how much of each rate is for the conveyance of the traffic on the railway or canal, in-veance of the traffic on the railway or canal, including truck tolls for the use of the railway or canal, and for the use of carriages or vessels or locomotive power, and how much is for other expenses, specifying the nature and detail of such other expenses." So that you had, as early as 1873, the principle established that the trader, not only as regards class rates but with regard to every rate charged from that station, was entitled to have his rate disintegrated?—Yes. I think the underlying reason for that legislation was much more in the

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direction of seeing whether the companies were exceeding their maximum than whether the relation between siding and station was fair. You must remember, what that Act was passed in 1873, it was before Hall's case, if I remember rightly.

Mr. Jepson: Yes.

4463. *Mr. Acworth:* Hall's case was 1885?—Even after Hall's case the terminal powers were altogether indefinite, and the conveyance powers of companies were so complicated that it was a matter of practical impossibility for a trader to know whether the company were justified in charging him as much as they were charging, quite regardless of any question between siding and station. I think all that early legislation—it has always been my view, though I may be wrong about it—was directed much more to the question of charging power than to the question of rebate or disintegration.

4464. *Mr. F. G. Thomas:* Whatever may have been the objects for which that statutory position was created, all that we are asking to-day is, that what is there made to happen only on application to the Commissioners should be the ordinary rule?—But are you asking it to-day?

4465. That is what I am putting to you?—I am asking the opposite for in hopes you might be in agreement with me.

4466. What we are, on behalf of the Chambers of Commerce, asking is, that in the rate book, in addition to the distance and the rate, there should be set out the apportionment—the disintegration?—Yes, but you are not asking that merely as a matter of information, or to get something looking pretty in the rate book. Are you after a bigger differentiation than obtains to-day between the rates paid by traders who use the stations and those who use the sidings? That is what we must know.

4467. I will come to what we are after in a moment. Apart from the suspicion that you have as to the reasons we are seeking this, there is no objection to it in itself?—It occupies a lot of time without answering any useful purpose.

4468. But if we attach very great importance to it, then I hope you will pay for it.

Sir John Simon: Why do you want it?

Mr. F. G. Thomas: You want me to tell you that?

Sir John Simon: Certainly.

Mr. F. G. Thomas: We want it because we want to know what we are being charged for.

Chairman: Is that due to an abstract feeling that you do not like paying for a thing without knowing what it is made up of?

Mr. F. G. Thomas: Because we have the strongest possible objection to paying for things which we are not given.

Sir John Simon: When you pay your tailor for a suit of clothes you do not insist on the tailor saying how much he is charging for the trousers, how much for the waistcoat, and how much for the coat, because it does not do you any good to know it. I do not know why you want to know these elements.

Chairman: If you have a five-course dinner at a restaurant and you did not happen to eat the fish, and you asked to disintegrate the bill, might it not be that the restaurant keeper would have a suspicion that you did not want to pay for the fish that you had not eaten?

Mr. F. G. Thomas: I want to deal with that point in a moment. If we are being provided with services, and we are not availing ourselves of them, then there would be a case on the part of the railway company for saying, "We are providing you with these services and you ought to make a contribution towards the cost of them." But I want to deal with that point in a moment.

Mr. Jepson: Can you answer Sir John Simon's question? What do you really want it for as a practical matter? What do you want this disintegration for?

Mr. F. G. Thomas: As a practical matter, the point is this. Taking the case as being proved, we want this disintegration for the reason that we want to know what the charge for conveyance to siding is,

and what is the charge for conveyance to the station plus services and accommodation which is provided at the station, because, if we do not avail ourselves of that accommodation and those services, we claim, on the principle which is admitted in the Act of 1894, that we are entitled to have our traffic carried at the conveyance rate to the siding, plus such sum for special services at the siding as may be agreed between the trader and the railway company, or, in default of agreement, as may be settled by the tribunal.

Chairman: That is the maximum. You are claiming that it should be carried to your siding at a rate not exceeding the maximum.

Mr. F. G. Thomas: No. Do you mean maximum in the sense of not an exceptional rate?

Chairman: I mean this. The Act of Parliament gives you an undoubted right to have your rate disintegrated to the extent of seeing that you are not charged more than the maximum allowed by the Act for Parliament, but does the Act of Parliament anywhere give you a right to a rebate in any sense strictly? I know the principle of undue preference, but, apart from the principle of undue preference, does the Act give you anywhere a right to rebate?

Mr. F. G. Thomas: Yes. I think the position with regard to sidings rebate was really settled in the case of *Muntz's Metal Company*. There were numerous cases before that, but the position, as I understand it, is this. Where you have comparable rates to a siding—

Chairman: That is the undue preference question.

Mr. F. G. Thomas: Not undue preference at all—nothing to do with undue preference. Where you have comparable rates to a station—it may be quite a different class of traffic altogether, but it is a comparable rate, not a question of undue preference at all—where the same rate is charged to a station and to the siding, if that is the position, then, if the trader does not have the advantage of the station accommodation and services, he is entitled to a rebate, if he is being charged for station services and terminals. He has to prove it, but it is not enough for the railway company to say that this particular rate is within our charges for conveyance.

Chairman: I asked you whether there was anything in the Act of Parliament—under what Section is the question raised?

Mr. F. G. Thomas: Under Section 4 of the Act of 1894.

Chairman: Under that the Commissioners have jurisdiction to hear any dispute which arises between the railway company and a consignee of merchandise at a siding as to any allowance or rebate to be made from the charges. Where is the Section which gives him either the allowance or the rebate? This is a Section giving jurisdiction to the Commissioners to hear and determine.

Mr. F. G. Thomas: If the railway company does not provide station accommodation or perform terminal services, the Railway and Canal Commissioners shall have jurisdiction to hear and determine such issue, and to determine what, if any, is a reasonable and just allowance or rebate.

Chairman: What Section is that?

Mr. F. G. Thomas: That is the last part of Section 4. I was going to refer to that case, which, I think, sums up the whole position with regard to it. The note is: "Where a comparable station rate is proved in which terminal charges are included, and a rate equal in amount is charged to a siding trader in the absence of special services rendered by the railway company sufficient to equalise the rate, it may be inferred either that terminals are charged to the siding trader or a higher conveyance rate without justification, and this latter the Commissioners will not allow."

Mr. Acworth: Is not this pure undue preference?

Mr. F. G. Thomas: No, I do not think it is. This is a right of the trader to recover from the railway company charges for services and accommodation not rendered.

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[Continued.]

Chairman: Let me put this question to you. Supposing there is station A, and a quarter of a mile distance from that station is siding B, and the railway company quotes 20s. to station A, and quotes 20s. 3d. to siding B, what right have you to object to 20s. 3d. to siding B unless it arises under some question either of maximum or of undue preference? I am assuming now he is charged more to the siding than to the station.

Mr. F. G. Thomas: We have the right to recover from the railway company whatever is represented in that 20s. 3d. for station accommodation and services.

Chairman: Supposing you put your claim before the railway company, and their answer is, there is nothing in that 20s. 3d. for station or terminal accommodation.

Mr. F. G. Thomas: That is what railway companies always say.

Chairman: "It is less than our maximum for conveyance, and that is the rate we choose to charge," what then?

Mr. F. G. Thomas: The Railway Commissioners can go behind that.

Chairman: The Railway Commissioners can only go behind that by saying that it is undue preference. Station A has paid 20s., and siding B is paying 20s. 3d., and, therefore, there must be undue preference.

Mr. F. G. Thomas: No, with submission, what the Railway Commissioners have to do is this: the Railway Commissioners say: It is quite true their rate is within the maximum, that is to say, you can justify the whole 20s. 3d. by conveyance charges alone; but the railway company always in their pleadings—I have put it in so many times myself that I know it almost by heart—say that in this rate no charge whatever for terminal accommodation or services is included, and they justify that by saying that the mileage rates more than cover the charges.

Chairman: How is the trader going to get over that?

Mr. F. G. Thomas: The trader gets over it in this way. He goes to the Railway Commissioners, and he brings other traders, not necessarily competitors with himself, who say, "I take my traffic to the siding. I have used the station. I have my traffic loaded and unloaded. I occupy a considerable amount of space there, and I only pay the same rate."

Chairman: Is not that exactly the point? The trader says in effect: "There is an undue preference being given to my rivals. He gets a conveyance rate really of only 18s. to the station, because there are terminals there which use up the other 2s. Therefore," says the man who is charged 20s. to the siding, "it is an undue preference."

Mr. F. G. Thomas: I do not think this is a question of undue preference. It is a question of what is included in the charge.

Mr. Acworth: That has been answered by the statement that there is nothing included in the charge.

Mr. F. G. Thomas: No, it is not, because the Railway Commissioners have settled the practice that they are entitled to go behind that, and to really look into the real nature of the rate. They say the railway company are conveying and are affording station facilities and accommodation and services for that particular rate. It must be assumed that they are charging for it. The railway companies are not a philanthropic institution.

Chairman: But supposing they are charging that, it leads to this inference, that the conveyance rate to the station is 18s. instead of 20s. The Commissioners have got so far as that, that the railway company is charging 18s. to the station and 20s. to the siding. Where is the section giving the rebate?

Mr. F. G. Thomas: It is under Section 4.

Chairman: Section 4 is only a jurisdiction section.

Mr. F. G. Thomas: They have to decide the amount of the rebate.

Chairman: They have to determine what is a reasonable and just allowance for the rebate, but they cannot order it to be paid.

Mr. F. G. Thomas: They have power.

Chairman: If you get them on the question of undue preference then they can. If you say it is not an undue preference, where do they get the power to order the payment of rebates? I daresay it is there. I am not very familiar with these Acts, but I am asking you where it is.

Mr. F. G. Thomas: They certainly have that power.

Chairman: Surely it must come out of the undue preference clauses?

Mr. F. G. Thomas: No.

Chairman: Why should not it come out of the undue preference clauses?

Mr. F. G. Thomas: The point is that the railway company are charging for services and accommodation which they are not affording the trader.

Chairman: Suppose there was no station, and it was a question of distance along the line, and you prove that travelling north-east 20 miles distance a man is charged so many shillings, and travelling south-east another man was charged for a different distance so many shillings, would you say a rebate could be obtained?

Mr. F. G. Thomas: No. This is a very special thing. This is a special protection given to the trader, which is given when he provides the siding.

Chairman: Perhaps we had better not take up further time in discussing it.

Mr. F. G. Thomas: I do not know whether Sir Alexander would differ from the view which I am putting to you.

Chairman: Sir Alexander says that he cannot understand Section 4 of this Act. He has made it quite clear already.

Mr. Acworth: Assuming that the rate is within the maximum and, therefore, *prima facie*, the rate that the railway company may lawfully charge and make, can you tell us under what section or under what powers then the Railway Commission order the rebate, except because they consider it is an undue preference? Perhaps you will give us the answer to that.

Mr. F. G. Thomas: I do not think I should be able to give you a better answer than the one I have already given, that they have the duty imposed upon them under the statute.

Chairman: They have imposed an obligation on the company to dissect.

Mr. F. G. Thomas: They have imposed upon them by statute the duty, in cases where they find a trader is being charged for services and accommodation he is not receiving, of finding out the fair amount that ought to be repaid to him. It is just the same as the cartage rebate.

Mr. Acworth: You do not deny, supposing they were to find out, *in vacuo*, independent of any other rate, that the railway company had power to charge £2 and they were in fact charging 38s., and you proved up to the hilt to the Commission that it was unreasonable to charge more than 35s., that the Commissioners would have no power to say, Go down to 35s.

Mr. F. G. Thomas: Yes, but it is not a question of a maximum rate at all.

Mr. Acworth: They have no power to order you to reduce your rate because the rate is not reasonable?

Mr. F. G. Thomas: It is not a question of reduction, it is a question that the Statute has recognised the distinction between conveyance charges and terminal charges where the trader is getting conveyance but is not getting terminal accommodation. Whereas another trader is getting conveyance plus the terminal accommodation. The trader who is not getting the terminal accommodation is entitled to have a reduction representing the amount which the Commissioners find, after enquiry, to be in the rate as representing terminal accommodation and services. That he is entitled to get from the railway company. The only set-off to that is that the railway company may say: "True we are not giving you terminal accommodation and services, but we are performing at sidings services which are equivalent in amount, or nearly equivalent in amount, as the case may be."

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Chairman: I understand the Commissioners do make these orders, and they are acted upon, but we have not been able to find any section which gives them jurisdiction to make the order.

Sir John Simon: It is a very old puzzle.

Mr. F. G. Thomas: I do not know what the object would be in determining the amount of rebate if it could not be recovered.

Chairman: It is the same as disintegrating the rate as you have an abstract desire to do.

Mr. F. G. Thomas: I have indicated in the questions I have put to Sir Alexander what we are asking for in this respect.

Chairman: Yes, you would like a clause put in saying you are to have a rebate, so as to put it beyond doubt in the future.

Mr. F. G. Thomas: What we are asking for is this, that the rates, whether to stations or to sidings, shall be put in the rate book for conveyance.

Chairman: With the object of getting the rebates—there is no doubt about it.

Mr. F. G. Thomas: My friend has pointed out to me Section 10 of the Railway and Canal Traffic Act of 1898. I think that gives the Railway Commissioners power to enforce their decisions.

Chairman: I will look at that.

4469. *Mr. F. G. Thomas:* "Where any question or dispute arises, involving the legality of any toll, or charge, or portion of a toll, rate, or charge, charged or sought to be charged for merchandise traffic by a company to which this part of this Act applies, the Commissioners shall have jurisdiction to hear and determine the same, and to enforce payment of such toll, rate, or charge, or so much thereof as the Commissioners decide to be legal." So what we are asking is, in accordance with the principle which was settled in 1873, that the rate book shall contain the conveyance charge. The question of what is to be added to that for siding services is a matter which will have to be settled as between the trader and the railway company, or, in default of agreement, it will have to go to a tribunal. That is the position in which we ask to be placed. (*To the Witness.*) You do not suggest, Sir Alexander, that the railway companies provide accommodation for all the traffic that is dealt with in their sidings?—No.

4470. Take the case of a station where there are six sidings in the neighbourhood of the station; it may be that the railway company has accommodation to deal with the traffic of any one of those siding owners?—It may be so.

4471. They might not, and probably would not, have accommodation to deal with the whole of the traffic?—It might be so.

4472. What you are asking, I understand, is that, because the trader has the option of having his traffic dealt with at the station, if he so wishes, he has to pay for the station accommodation, although he does not get it?—Yes. May I just add this? Of course, we have no evidence that the people who use the stations desire to have the additional burden put on them that you are suggesting they should bear.

4473. I am not suggesting that they should have any additional burden.—Then that is just where the difficulty arises between us, and where we should have a clear indication. I take your argument, and we take the evidence we have heard, as indicating that those who have made those speeches, and those who have given that evidence, do mean that there should be more rebates in the future than in the past. Then that money has to be made up by somebody, and it can only be made up by those who use the station, or spread over a bit. We should like to know whether that is the view of those who use the stations, and we have no indication up to the present.

4474. You may take it that it is the view of those who do not use the stations that they should not pay for accommodation which they do not have the advantage of?—Then, you see, before we get through this Inquiry we have to face up to the real difficulty. It is very easy to skate over the ice, but sooner or

later we have to face up to the difficulties. That must mean one of two things: either that the companies are not to get properly remunerated for the money they have spent on the stations, or they are. If the argument is, and I think it would be Mr. Marshall Stevens' argument, that we are not to get remuneration for that, let us be told that, and let us face up to that; and let there be a direct issue there on which the tribunal will come to a decision. If it does not mean that, then it must mean, as far as we can see—there may well be a *tertium quid* which has escaped our notice, but I am speaking in the absence of that—that you are going to say somebody else has got to pay, and one would like to know whether that somebody is willing to pay it. That is all I mean.

4475. What I am putting to you, and I understand you agree with me, is that the railways have not provided at their stations accommodation for dealing with traffic which is dealt with at the sidings collectively?—I would repeat the answer that I gave this morning, that it seems to me, if we are agreed on the principle, cases such as that may be a matter of some negotiation and some settlement.

4476. A very large number of sidings are not contiguous to stations at all?—But I do not think the contiguity of stations has anything to do with it. A man's works may be two miles from a station, and in the past he has carted all his traffic to his works. He thinks it would be more convenient, and he might think he will save money by having sidings. He gets a siding; it may be two miles from the station. He saves his cartage straight away, and generally thinks he gets a convenience.

4477. Is not that a very desirable thing?—It may be so and it may not be so. It may be that our station was dealing with the traffic quite satisfactorily, and could go on dealing with it, and the mere removal of his traffic, under the scheme which is suggested, has the effect of depriving us of a certain amount of revenue.

4478. But surely what we are trying to get at is the most economical way of dealing with the traffic? Surely, it is more economical both for the railway company and the trader that his traffic must be dealt with at the siding?—By no means invariably; there are a good many cases to the contrary.

4479. I should have thought, when the keenest competition which railway companies have to meet is road competition, that it was desirable to do everything you possibly could to facilitate siding traffic?—I think we shall continue to do so.

4480. A trader, if he cannot have some inducement to send his traffic to a siding, if he has got to put it on the road at all, is very likely to keep it on the road for the whole of the distance?—It may be the competition of the roads will drive us to do a number of things. We have to meet competition, but we are on general principles now.

4481. There is one point I want to ask you about, and that is continuous mileage. The principle of continuous mileage is recognised where a company is running over another company's line?—I thought it was pointed out that that is only so as regards a particular clause—the short-distance clause.

4482. That is what I have in mind?—Yes.

4483. I think you pointed out that where companies have amalgamated they, as a term of amalgamation, have been willing to forego the advantages or short distance clauses?—Yes, I think that is so, but I think it is a term that has been put upon them in many cases.

4484. You would agree, I am sure, that it is very desirable, if it can be achieved without undue discrimination or injustice, to get a continuous mileage rate?—I can answer that very easily if you tell me the advantage of it.

4485. I should have thought it was an advantage that one would be able to find in the rate book the distance from point to point which will enable the trader to know what his rate will be when he finds the rate appropriate to that particular article and multiplies it by the distance that the traffic has to be carried.

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Sir John Simon: It must be a higher rate per mile.

4486. *Mr. F. G. Thomas:* As to the effect, that is another point; but I am only dealing with the matter of principle at present. May I just answer that particular point? I wondered whether you would say that. Let me tell you what always occurs to me when that answer is made. If you have to go to the rate book for your information, it is really no more trouble to look up and see Station X, what is the rate for an article for Station X. There is really no difference in the amount of trouble in seeing how far is Station X, it is 149 miles; what does the continuous mileage scale yield for 149 miles; I see it is 23s. 6d. That is no less trouble than turning to the index in the rate book: Station X, page 43; rate to Station X, 23s. 6d. It is no more trouble in the one case than in the other.

4487. I should have thought it was?—There may be other arguments. I do not want to say it is an impossible thing if there is a strong desire for it. As Mr. Jepson pointed out, if you raise your scale you get the same result. As I have said, as regards the North Eastern, I think, it would probably be capable of adjustment, but I am given to understand that some of those I represent think it would be very difficult to meet their particular cases. It occurs to one at once that a small company might be hard hit by having to give up, as it were, always the short distance. Supposing your normal lead is 14 miles, therefore, they get all their traffic at present at the same high rate, and it may be very difficult for them to recoup themselves out of some general raising of the scales, but I do not want to put it higher than that. I do not think the particular advantage that you pointed out, and which one often hears pointed out, has anything to do with it. So many who advocate simplicity do not seem to recognise that directly you have to go to the rate book it comes to the same thing, whether it is either a journey to the rate book or it is a letter to the person who keeps the rate book, it is one or the other. Granted one of those two things has to be done, there is very little additional trouble involved in the form in which you get your information out of the rate book. Some people think you might well be able to do without the rate book, but I do not think you can.

4488. As we seem very near on the matter of principle, I will not argue the point with you?—I should be very glad if you will let me off that.

4489. The importance of this question depends a great deal on the future of the railway companies in point of ownership?—I would say yes, I think it does, but I think it also depends on another thing: whether it is found practicable to have uniform scales and uniform tariffs for the different groups of railways in the country. If you do not succeed in that, I do not think there will be very much in continuous mileage. If you do succeed in that, it is another step towards uniformity, which has a good deal to be said for it in the abstract.

4490. It is a matter which might be dealt with, as it is frequently is, on the apportionment between the companies; that is a domestic matter?—That is so. I explained that.

4491. The only other point I have to ask you is about owners' risk. You are suggesting, I think, that some sort of bargain had been arrived at between the railways and the owners as regards the owners' risk condition. I think the traders at the time thought they were not satisfied with the suggested modification?—I thought it was an agreed report. That is my recollection.

4492. I am informed by the witnesses here that the traders stated that it did not meet certain objections?—I did not remember that, but I think those who represented the owners gave them away, if that was so.

4493. I think the recommendations of that committee have not been carried out in regard to dangerous goods. That rather points to it not having been an agreed matter. If it had been an agreed

matter, surely that would have been carried out?—I thought you were on owners' risk?

4494. I was, but it was part of the same report?—Yes, I think there is a recommendation about dangerous goods that was not carried out.

4495. What the traders are asking is that it shall not be open to the railway company to divest itself of the duty of taking ordinary care. Is that so?—I thought I saw on the notes just the opposite proposal to that, that at a certain rate you should be able to absolve yourself from liability, but I may be wrong if you say it is not so.

4496. I am just putting our position?—I thought there was a proposal that at a rate which was owners' risk rate you might absolve yourself.

4497. That is a proposal which, so far as the Chambers of Commerce are concerned, we object to?—It is not your proposal? I did not know whose it was.

4498. We desire that, in the case of all traffic carried upon the railway, the railway shall not divest itself of the duty of delivering goods and taking ordinary care while the goods are in its custody.

Chairman: What risks do you propose to relieve the railway companies of?

Mr. F. G. Thomas: Under the ordinary companies' risk the railway company are insurers.

Chairman: On the carriers' risk, yes; but what do you propose to relieve them of?

Mr. F. G. Thomas: What we propose to release them from is all risks other than damage which is the result of their not taking care.

Chairman: Having regard to the practical question, do you think a difference in the rate of one-half or one quarter per cent. would be the measure of the difference of risk?

Mr. F. G. Thomas: We are somewhat in the dark on the measure of the risk as to what is really the insurance premium.

Chairman: You see, if it is going to be taken before a jury, the goods having arrived damaged, in nine cases out of ten or in 99 cases out of 100, the jury would find it was due to the negligence of the railway company. They would have to bring very clear and definite evidence that it was done by something over which they had no control, and that they would very seldom be able to do. So that, apparently, on the companies' risk and the owners' risk, the difference would be very small, and that would mean your making the difference in rate very small. Is not that so?

Mr. F. G. Thomas: I think that the disproportion between the owners' risk and the companies' risk rate bears really no relation to the premium.

Chairman: I daresay not, but somebody is now going to fix what the difference is to be in the future. If the railway companies remain liable for anything which an ordinary jury would say was the negligence of the owners, the difference would be infinitesimal would it not?

Mr. F. G. Thomas: I should have thought not.

Chairman: It is only in the very rare case that a carrier is hit for something which was not in fact put down to the negligence of his servant.

Mr. F. G. Thomas: I think where a trader consigned to a railway company goods which are packed in an improper way, having regard to their frailty, it being a type of article which is very liable to injury even taking ordinary care, he clearly would not be entitled to recover if he took the lower rate, as it must be assumed that he takes the risk.

Chairman: How do you fix negligence in that case?

Mr. F. G. Thomas: I think any body of reasonable men would there infer that the trader deliberately took that risk.

Chairman: We are talking about the legal bargain which is going to be reduced into writing. If you are going to say that the railway company is liable for the negligence of their servants, and the goods arrive damaged, would not the natural inference be that the railway servants dropped them and therefore the company would be held liable?

Mr. F. G. Thomas: I think it would depend on the nature of the consignment.

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Chairman: Even fire would not be covered if it was suggested the fire was due to the negligence of the railway company. It seems to me that the traders are asking that so much liability shall be left on the railway company that the owners' risk rate would have to be very nearly as high as the companies' risk rate, and they would get no benefit from it. It is cutting their own throats.

Mr. F. G. Thomas: I think, whatever should be the difference of risk actually arrived at, we should be prepared to face that rather than that the railway company should be exempted from the liability to take ordinary care of the goods consigned to it.

Chairman: Are you accepting the proposal that the railway company may have a yet lower rate to absolve them from risk?

Mr. F. G. Thomas: We are.

Chairman: Why should not two independent contractors make a bargain of that sort between themselves?

Mr. F. G. Thomas: We want to take this bargain out of the region of special contract.

Chairman: Supposing you have a contractor of full intelligence, and he said, "I should prefer it if I am going to get a reduction of 10 per cent. in my rate," why do you want to restrain him from making that bargain if he wishes?

Mr. F. G. Thomas: We have known in practice that, where companies give exceptional rates without bringing in the owners' risk clause as one of the make-weights to their benefit in the rate, the difference between the full rate and the exceptional rate is not really the difference between the trader and the companies' risk; it represents a number of factors of which that is only one.

Chairman: If we look into it from its very inception is not this what the railway company takes upon itself? We can afford to let the trader have these special terms on that condition, but if you are going to knock out these things you will not get the same terms.

Mr. F. G. Thomas: What we ask is that the difference between owners' risk rate and the companies' risk rate shall really represent the difference of risk which the company take in the one case and the trader takes in the other.

Chairman: Would it be worth while putting it in, if that were a matter of 2 or 3 per cent., or if it was a matter of 1 per cent?

Mr. F. G. Thomas: I think it would be worth it. Very small differences in rates are important. Big contracts turn on very small difference in price.

Chairman: Twopenny in the sovereign on the rates for a ton would not be worth having a special rate for, surely?

Mr. F. G. Thomas: When we get at what the actual difference is to be, it may have to be considered.

4499. *Chairman:* It would be extraordinarily small if you are going to leave them liable for negligence, because they are fully justified in saying, we know perfectly well what happens. We are going to the Court to give evidence to meet a case of damaged goods. It is difficult to explain how and when they were damaged. The natural inference is that the porters of the railway company must have been very rough in handling them, or they must have dropped them, or the engine driver must have been bumping his train about in a way he ought not to have bumped it, and therefore it is open to the jury to find it is the company's negligence.

Witness: There is a very good illustration of that in the carriage of passengers. Everybody knows that the railway accidents where the railway company does not have to pay are very very few. That is to say, although we are not insurers, it is practically certain that we always have to pay. I think the lawyers have some maxim, *res ipsa loquitur*, which they apply to it. You cannot get out of it,

although you are not insurers. It is rather difficult to get at what is in the traders' mind about owners' risk. What strikes us, apart from technicalities, is that it is hardly worth cumbering our rate books with two sets unless there is some substantial difference between them. If you really whittle away the difference between the two so that it becomes unintelligible, it becomes a question from the business point of view, is it worth while having the two? If you do like to have two rates—one, the company takes the risk, and the other the company takes no risk, that is an intelligible method of business. A great many men prefer no risk. But if you simply have a sort of balance saying, there are 23 risks that might happen, and I want a rate for which the company is liable for all but three of them, it does not seem worth while doing that, as a matter of business. That is rather a different problem from what Mr. Thomas is putting as regards exceptional rates. As I understand, you are on the general principle of how are the rates to be quoted on the standard scales. If you say, we want the railway companies' position to be very nearly the same in the two classes, it does really hardly seem worth while going to the trouble of duplicating the set of rates.

Chairman: Is not your difficulty met by this, that even if the railway company in fact did quote exceptional rates, it could quote them both at owner's risk and company's risk?

Mr. F. G. Thomas: So long as we are satisfied that the difference between the owner's risk and the company's risk rate is not more than, approximately, I do not say exactly, the extra charge for insurance.

Chairman: A proposal that has been put forward, but which nobody has accepted, was that every rate should be quoted in duplicate and the percentage between them should be indicated in the classification: that is to say, that the railway company would really only have to quote one rate as an exceptional rate. If it quoted it at company's risk, you would know that such and such a percentage was to be taken off for owner's risk. If it quoted it at owner's risk, there would be such and such a percentage added which would make them carry at company's risk?

Mr. F. G. Thomas: Yes. The only qualification we suggest on that is that we do desire that the obligation to take ordinary care should be included in the owner's risk rate.

Chairman: I suggest that if you had that, the difference between owner's risk and company's risk would not exceed two per cent., and would not be worth having, and everybody would carry at company's risk.

Mr. F. G. Thomas: That is the view which we have taken of the position; but what we are most anxious to have, and on that I think the suggestions made would meet us to a very large extent, is that, where we have the option of the two rates, the difference in the rates should really be the difference represented by a difference in risk, and not represented by a number of other factors as well as the risk; that is, a rate in which the risk taken by the company is not the governing factor at all.

Mr. Martin: Do not railway companies compel the traders to carry certain things at owner's risk?

Mr. F. G. Thomas: Yes, that is what has happened. That is my first point, the difference between owner's risk rate and the only alternative rate is so great as to be wholly disproportionate.

Chairman: Sometimes it has been quite unrelated. *Mr. F. G. Thomas:* Yes.

Chairman: It is suggested that should be met by compelling the company to quote the two rates with a substantial percentage apart.

Mr. F. G. Thomas: I think that goes a long way to meet our difficulty.

Cross-examined by SIR ROBERT ASKE.

4500. I just want to ask you a few questions on the practice to be adopted on the reduction of rates. There are three particular objects which a railway company would have in view in reducing rates: first,

to meet water, or other competition; secondly, to benefit import or export traffic; and, thirdly, to benefit individual traders or classes of traders, or the traders in particular districts?—Yes, you could

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put it in that way, but I do not think the desire to benefit people is largely predominant in the breasts of the railway managers. You are going very near that philanthropy which we are always rather anxious to disclaim.

4501. Those might be the grounds put forward for a reduction of rates. Does your proposal that the railway companies should be absolutely uncontrolled in reducing rates apply to all those classes?—It must, because it applies to other classes. I am not sure that yours is exhaustive.

4502. Then, assuming that this Committee fixes general scales of tariffs, and, if they see fit, approve some exceptional rates, you say that the railway companies ought to have the power, uncontrolled, at once, or at any future time, to alter the rates that have been so fixed?—To alter them downwards, yes; subject, of course, to the law of undue preference.

4503. There are 50,000,000 exceptional rates, we understand, which are affected by water competition?—Obviously, if they are treated individually, it will take a long time to put them either up or down.

4504. What you are saying amounts to this: you claim an uncontrolled right at any future time to alter practically half the rates which the Committee have fixed?—Not only half, but the whole.

4505. Is there any practical reason why the reduction of rates should not be under control of the tribunal as well as increases of rates?—I think the two propositions are very different. You obviously must have some control in the upwards direction; at least, the trader certainly would not be satisfied if there were not. The traders would insist either on having a statutory maximum, or someone to see that we did not go up, too high.

4506. That is not an answer to my question?—I am sorry.

4507. My question is, is there any practical reason why the tribunal should not control reductions as well as increases?—It depends on what you mean by practical.

4508. Any practical business reason?—Well, I would say that it would not be to the advantage of either the railway companies or their customers that that freedom of commercial action should be taken away from them. I would put it in that way.

4509. It is not much use a Committee establishing broad bases if the railway companies are possibly in the near future immediately to revolutionise them, and put the rates back again?—In the past the complaints as to railway rates have so seldom been that they are too high that one has really not troubled very much with the other side of the problem—one is not used to that sort of complaint.

4510. I take it from you then that there would be no great inconvenience in the reduction of rates being subject to the tribunal as well as the increases of rates?—I would say it would be a very great deal of inconvenience. We should have to go through some inquiry, I suppose, with regard to every rate before we could quote a special rate or make any other reduction. There would undoubtedly be a great amount of practical inconvenience. There may be some overriding reason for it—that I do not know—but anyone can see it will be less convenient.

4511. As you know, at the present time, by the position in which the railway companies are in, they would be able to drive out all competition, whether coastal or canal, if they thought fit, unless there is some control?—I do not think so at all.

4512. They would have power to under your suggestion?—Yes; but you must suggest some motive. Unless you want to ruin some unfortunate canal company, why on earth should we do such a thing? We have to live as well as the canal company.

4513. You would be able to appropriate the whole of the traffic?—But probably at a loss to ourselves,

and there is no object in doing that. We do not take traffic from the canal companies for the pleasure of taking it. We only take it, if we take it at all, as part of the operation of earning our revenue. In the past we have been much more afraid of canals than canals have been afraid of us.

4514. Perhaps you recollect the evidence given us that unless your competitive rates were below the level of the railway rates, the trader would always prefer to send his goods by rail.

4515. So that it would not be a question of railway companies carrying at a loss?—It might be. If we in the past had carried traffic at the same rates as the water carriers, I should think it would very often have been at a loss. We could not have afforded to do it. The costs of water carriers have been less than our costs.

4516. But under present conditions you could?—The present conditions are so abnormal. I do not know as a fact how far the high freights to-day are the result of the high profits of the water carriers or due to high costs. I have no information. All we know is that the charges are high. It may be that it is due to high profits, or it may be it is due to high costs.

4517. That information has already been given?—I do not know, of course.

Mr. Jepson: Where is the advantage to the traders in having to follow out your suggestion which is that the railway companies shall not, without coming to the tribunal, be able to reduce their standard rate? Just take this case. A trader comes to a railway company and says, "I want something below the standard rate," and, having made out his case, the railway companies say, "Very well, you shall have it." According to your suggestion, he has to go to the tribunal to get it sanctioned.

Sir Robert Aske: Not necessarily, because in those cases the rates might be put into force unless some body objects.

Mr. Jepson: That is what I am coming to. In the ordinary way, if the company had freedom, the company would agree with the trader and put the rate on the book as something below the standard or tariff?

Sir Robert Aske: Yes.

Mr. Jepson: By your suggestion it could not be put in force until it has been sanctioned by the tribunal, but supposing the railway company and the trader came to the tribunal and said, "We agree upon this," it is only a formal matter, and it is put in force unless you say that any reduction which is proposed by the railway company by agreement with the trader shall be advertised for everybody to shoot at.

Sir Robert Aske: That would not be my suggestion. Rates as between a railway company and an individual must be treated as different from reductions of rate on principle applying to all traders and all traffic. For instance, this Committee might decide, as most of the traders ask it to decide, that certain rates should not be given for imported traffic, but if the proposition of the railway companies is accepted the railway companies might at once override the decision of the Committee, and give special rates for imported traffic. That is a matter which surely should not be beyond control.

Chairman: You want a limited freedom to the railway companies to reduce the rates in certain directions?

Sir Robert Aske: Yes.

Mr. Jepson: I think you ought to formulate that and put your limitation in some sort of Clause.

Sir Robert Aske: Perhaps, without dealing with this by way of examination, we might put forward a clause for the consideration of the Commission and have it put on the table.

Chairman: Certainly.

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Cross-examined by Mr. ABADY.

4518. I want to ask you a question or two on behalf of the Mining Association on the topic of the tribunal. I understand your evidence to be that you are strongly in favour of the continuance of the Railway and Canal Commission?—Yes, we are.

4519. And that you acquiesce in the establishment of another junior tribunal, a business tribunal, not because you like it, but with the idea of meeting the traders' views?—Yes, generally speaking, that is so.

4520. I think you have said you would not refer to the business tribunal any matter involving a general question of principle?—Not without an appeal.

4521. I think at Question 3476 the Chairman put it to you thus: "Put shortly, your answer is you would not allow general questions of principle or questions of great magnitude to go to the business tribunal? And you said, 'Yes'?"—Yes, I think it would be better to take them to the Commission.

4522. Then, in reply to Mr. Davis, you also said that, speaking broadly, your view is the business tribunal should be limited, as far as possible, to individual cases, individual grievances and individual wants?—Yes, I did say that.

4523. Do you think it is possible to separate individual grievances, individual wants, or individual cases from questions of principle?—Not always, but it could be done sometimes. There might be a number of individual complaints that did not raise any particular question of principle.

4524. But there may be individual complaints which eventually did raise a number of questions of principle, although it was not foreseen in the first instance?—Undoubtedly.

4525. I do not know whether you have read the evidence which the Mining Association presented through Sir Thomas Ratcliffe Ellis?—Yes, I read that.

4526. Having regard to the desirability of having small matters tried by a junior tribunal, and matters of principle by the Railway and Canal Commissions, would not it be more convenient if the individual matters were sent, as Sir Thomas Ratcliffe Ellis suggested, to the Registrar or to the Registrar with assessors? That is to say, to a junior tribunal which would be actuated by the same code of ideas and principles as the senior tribunal?—We feel no objection to that at all. We think that might be quite a workable procedure, but we are anxious to meet the general body of traders in a matter like this.

4527. That is what I gather?—Most of the coal questions are bigish questions when they come along.

4528. I am not sure that I am entitled to put this question in cross-examination, although I think I could get it in on the question of owner's risk, but this circumstance has happened. Inflammable liquid, that is to say, benzol, has been consigned by a railway company, and it is alleged by the consignor that, through the action of the railway company in putting the drums containing benzol in the same trucks as picks, the picks have penetrated the drums and a fire resulted. Under the consignment note conditions, the railway company is not liable. What I want to put to you is this. You carry dangerous goods at the owner's risk and on certain payment, but with ordinary merchandise you make a distinction between the goods that you carry at owner's risk and the goods that you carry at the company's risk. Where you carry at owner's risk you charge less than you do when you carry at company's risk. If you take dangerous goods, would not it be fair to the trader that you apply the converse principle? Where now you only carry at the owner's risk on certain rates being paid should not the railway companies be put in a position whereby they would be compelled to carry dangerous goods, which they will take at all, at their own risk, subject to the consignor paying an increased charge which covers, as it were, the insurance fees?—You are not on the question of interfering with the discretion as to carriage, but you are on things we do carry?

4529. Yes. Assuming you do carry anything, and that is left to your discretion, would it not be a fair thing to apply the converse principle?—Charge a higher rate at company's risk—well, no objection occurs to me at the moment. If you will treat your question as a warning to the goods managers they will be prepared to answer that question when they come along. I am bound to say no answer occurs to me at the moment.

4530. There is one other matter I want to raise on behalf of the Mining Association, and that is with respect to sidings and station accommodation. You remember the principle you have enunciated that station accommodation should be paid for even if not used. I take it that you are not dealing with traffic that passes through colliery sidings?—No, obviously not. The station obviously could not be considered as a sending point for the produce of the colliery except to a very limited extent.

Mr. Jepson: Sir Alexander admitted the other day that what he said did not apply to traffic like coal from colliery sidings or iron from iron ore sidings and so on, but it was for general merchandise.

4531. Mr. Abady: May I ask you, Sir Alexander, one question on behalf of other clients for whom I am appearing, and that is the Federated Home-Grown Timber Merchants' Association. It is exceptional rates I am dealing with now. When Mr. Whitehead was cross-examining you, Sir Alexander, on the pig iron chart you put in, I think you agreed with him it would be desirable by having a line through the dots that lay across the chart to fix a special tariff, and that exceptional rates, or rates below that tariff should only be fixed to meet the exigencies of trade. Is not that your view when once you have fixed your special tariff scale?—You would charge as much traffic as you could on that scale. That is the object of having it.

4532. And exceptional rates should only be fixed to meet the exigencies of trade?—Yes, we think there would be a certain amount which we should not be able to get on to the scale; the traffic would not bear the scale rate.

4533. The Federated Home-Grown Timber Merchants' Association have this view, that there are no exigencies of trade which justify exceptional rates for the carriage of timber.

Mr. Jepson: Is that the view of the Timber Trades Federation?

Mr. Abady: That is the view of the Federated Home-Grown Timber Merchants' Association?—They would all be able to pay the tariff rate?

4534. They say that there are no exigencies such as the establishment of works or of a manufactory at a particular point which can only exist by reason of special rates, or something of that kind. They say there are no such circumstances which apply to timber.

Mr. Jepson: Their remarks have special reference to imported timber.

Mr. Abady: No, not necessarily. They are home-grown timber people.

Mr. Jepson: Quite so.

4535. Mr. Abady: That is quite right—exceptional rates in fact are alleged to give preference to imported timber, but Sir Alexander has been enunciating a principle with regard to these special scales. I want to ask him how far he thinks it fair to apply that principle universally, and if you apply it universally I want to suggest and to get his view, yes or no, whether there are any exigencies of trade that he knows of which would justify exceptional rates being quoted for timber, or whether all timber passing from one point to another of the same distance should not be the same rate?—I have not studied the subject, but I should be very surprised to find that there were no special rates for timber

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that the exigencies of trade would not necessitate the maintenance of. For instance, take the case of imported timber; I should think there are a number of special rates for imported timber.

4536. If they were special rates for imported timber *qua* imported, I suggest that it is in contravention of the section of the Act of Parliament?—If there is no other reason for the difference than the fact that they are imported, yes; but there probably is. Probably there would be some element, either of competition or of economy in transport, which justifies the exceptional rate. If you are right, it

(Adjourned for a short time.)

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Cross-examined by Mr. CLEMENTS.

Mr. Clements: On behalf of the Mansion House Association, I adopt generally the cross-examination of Mr. Balfour Browne so far as it supports the Association's case, but there are a few questions I should like to put dealing with points on which he did not touch.

Chairman: If you please.

Mr. Clements: But before I put those questions it occurs to me to ask whether it would assist the Committee if I were to refer to the cases—I am speaking now with regard to the siding rebate question—and shortly give the history, from my recollection of the circumstances, which led up to the passing of what Sir Alexander has described as that "mysterious section"—Section 4 of the Act of 1894. If you would rather not have it, I will refrain from putting it before the Committee.

Chairman: If you do it briefly, as I know you will, it will help us.

Mr. Clements: If I get off the line, no doubt my friends will correct me. My recollection of it is this. Before the passing of the Rates and Charges Orders, in which terminal charges are separately stated from conveyance charges, the maximum rates of the railway companies were, I think, of two kinds. There was a maximum rates clause, which appeared to include everything in the rate per ton per mile; and there were other Acts with clauses authorising conveyance rates per ton per mile, and also another clause giving them the right to charge for collection or delivery or other services incidental to the business or duty of a carrier. Some litigation took place, to which Sir Alexander has referred. He spoke of the old case of *Honard* against *The Midland Railway*, and of *Greenwood* against *The Lancashire and Yorkshire Company*. Those were cases in which the owners of private sidings endeavoured to recover rebates in respect of their sidings on the ground of undue preference. Those decisions were to some extent responsible for what was subsequently done. I think I am right in saying that it was felt, not only by the traders, but by the railway companies themselves, that it was unfair that the siding owner who had provided his own station and rendered his own terminal services should have to pay the same as those who did not do so. I am not quite sure whether the railway companies did not actually urge that view at the Inquiry of 1890 and at the subsequent Parliamentary Inquiry. However that may be, Section 24 of the Railway and Canal Traffic Act, 1888, under which the revision of maximum rates and charges was made, specially required a separation of terminal charges from conveyance charges, and that direction was carried out, as we all know, and now appears in the Rates and Charges Orders. After those Orders came into operation claims were made by private siding owners for rebate. These were more or less objected to by the railway companies, and ultimately it was agreed, I think, by the Mansion House Association and two or three railway companies—one of which was the Great Northern, who were represented by Sir Henry Oakley, who took a leading part, as a matter of fact, in these matters—a meeting took place before the Board of Trade, and the question

will make that particular article easy to deal with on the tariff, but I very much doubt whether it would be practical politics to get rid of all these rates. I cannot conceive it. One has a good deal of timber on the North-Eastern, coming in both at Hull and Hartlepool.

4537. I put this to you because I have not had an opportunity before of stating the view for the home-grown timber people. Perhaps you would not mind getting your goods people to consider the matter, now you know what the point is?—Yes, thank you very much.

of whether the rate should be the same from the station as from the siding was discussed; and the Board of Trade expressed an opinion—I am not sure that it is not the only opinion they have ever expressed under the Conciliation Clause. I have a note of it here, and it was to this effect: "The Board of Trade, having given very careful consideration to the representations and arguments advanced on both sides, are of opinion that the total charge for siding traffic should not be the same as for traffic on which the station terminal is properly charged." Sir Henry Oakley, if I remember rightly, was not altogether disposed to accept that, and, perhaps very properly, thought there ought to be something in the nature of a formal decision; and in consequence of his taking that view a test case was fought—a test case which gives its name to the proportional principle—*Pidcock* against (as it was then) the *Manchester, Sheffield, and Lincolnshire Railway*. With your permission I should like to draw attention to that decision, because it may solve the doubts which appeared to be in your minds as to whether the Railway Commissioners had full jurisdiction to allow a rebate quite independently of whether there was any question of undue preference. I have not the actual volume of the report containing the case itself, but I have one of the volumes which contains a general index and digest of cases contained in previous volumes.

Sir John Simon: What was the date of the opinion of the Board of Trade?

Mr. Clements: It was in 1893. I am unable to give the exact date.

Sir John Simon: That is to say, it was after the passing of the Rates and Charges Act?

Mr. Clements: Yes. I thought I had made that clear.

Mr. Davis: You have not made it clear what was the result.

Mr. Clements: I was coming to that. I have stated the result as far as the Board of Trade were concerned; now I propose to cite the case of *Pidcock*. The digest has it here—I need not go into the question of the ownership of the siding, as that does not arise: "Held, that the section gives a rebate 'in respect that'; that is, in proportion as to the extent the railway company do not provide station accommodation or perform terminal services, and that the jurisdiction of the Railway Commissioners is not ousted on proof of the fact that one terminal service, e.g., covering, is performed by the railway company." Another part of the decision was this: "Held, that as by Sections 3 and 26 of the defendants' Order Confirmation Act, 1892"—those sections have been referred to, and you will be familiar with them—"Retford was not a 'terminal station,' the railway company were not entitled to charge to the applicants a station terminal at Retford station in respect of their malt or barley traffic passing from or to the siding of the applicants connected with the Retford station; and further that, under the facts proved, the applicants were not entitled to a rebate from the rates they had been charged as respects any service terminals included in them." That is Volume 9 of *Railway and Canal Traffic Cases*, page

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46. That was followed by a considerable series of cases, brought under Section 4 of the Act of 1894, in which the traders claimed rebate, and in many cases they recovered it.

Mr. Jepson: I think I am right in saying that Pidcock's siding was connected with the Retford goods station of the Great Northern?

Mr. Clements: Yes.

Mr. Jepson: It was a siding out of their goods station, was it not?

Mr. Clements: Yes.

Mr. Jepson: It did not have a separate connection with the railway.

Mr. Clements: I have in my mind's eye the plan showing it came out of the goods station; and perhaps I might add that in view of that fact the railway company recovered back three-fourths of the station terminal rebate to compensate them for the extent to which the traffic used the station or the station yard.

Mr. Jepson: Yes.

Mr. Davis: Does that mean they paid the rebate and then afterwards got it back?

4538. *Mr. Clements:* What is meant was—if I may put it in figures—that they recovered the station terminal rebate of 9d., and the railway company recovered 6½d. for services rendered at or in connection with the siding under the Rates and Charges Act. To show that I think the Railway Commissioners have absolute authority under Section 4, I will simply refer to the fact that one or two cases were taken to the Court of Appeal, who, I should venture to think, had there been any holes (as it were) in the Commissioners' proceedings would have discovered them. The case is the *Salt Union, Limited, v. North Staffordshire Railway Company* (No. 1), reported in Volume 10 of *Railway and Canal Traffic Cases*, page 179. Perhaps I might say shortly what was held there upon the point in question: "*Held* (by the Court of Appeal), that an applicant under Section 4 of the Railway and Canal Traffic Act, 1894, must make out a *prima facie* case in support of the application, and that the applicants, by merely proving that they were charged the rates, and that the siding did not belong to the railway company, had not made out a *prima facie* case that the rates included a 'charge for station accommodation' so as to place upon the railway company the onus of proving that the rates did not include a charge for station accommodation." Then there were some *dicta* by Lord Justice Smith and Lords Justices Rigby and Vaughan-Williams. By Lord Justice Smith to the effect that: "The applicant must show that the rates charged to him include a charge for station accommodation or terminal services at the siding"; and by the other two Lords Justices that: "The applicant may prove his claim to a rebate independently of whether he is charged for station accommodation or terminal services or not." There are a long series of cases referred to in this volume, which only goes up to 1906, I think, and there are several cases in the subsequent volumes. That, as nearly as I can recollect, is the history of the "mysterious Clause"; and I ought perhaps to say, in closing a reference to these cases, that you will find that in no single instance is the siding owner required to show that there is an undue preference. Now with your permission, Sir, I will ask Sir Alexander a question or two?

Witness: Before you do so I am sure you will not mind me asking it to be on the Notes that I had no knowledge of that document you have read. I do not think I ever heard of it; or, if I did, I had completely forgotten it. I did not know of that opinion of the Board of Trade. I do not think I ever knew of it.

4539. That is quite likely. As I said, Sir Henry Oakley was principally responsible as far as the railway companies were concerned?—Thank you very much.

Mr. Jepson: Was that an official conference of a Departmental Committee of the Board of Trade with the traders and the railway companies, or how did it arise?

Mr. Clements: My recollection is that it was a proceeding under the Conciliation Clause.

Mr. Jepson: At the instance of a particular trader or association of traders?

Mr. Clements: I cannot remember whether it was at the instance of a particular trader or association of traders, or whether it was a mutual arrangement between them and the railway companies. I am quite sure that what I say can be tested by my learned friends.

Sir John Simon: It is mysterious to me, because I have not, and am not able to have, any record of it before me. I did not know it was any business of the Board of Trade under their conciliatory powers to offer opinions on matters of law to anyone. But however it arose, there it is. It happened after the Act was passed.

Mr. Davis: You do not know whether it was a collective application or an individual one.

Mr. Clements: It was collective. I thought I said it was the Mansion House Association.

Mr. Davis: I thought you said to Mr. Jepson that you did not know.

Mr. Jepson: I did not follow that it was at the instance of the Mansion House Association that the Board of Trade gave that opinion after consultation with the railway companies.

Mr. Clements: After a meeting with the two different parties. Of course, that was in the early days.

Mr. Jepson: No proceedings are reported.

Mr. Clements: No, unless it has been referred to in the report of their proceedings which the Board of Trade issued.

Mr. Jepson: If the appeal is under 31 they issue a yearly statement of the number of cases and the people who have applied for them.

Mr. Clements: Yes, they used to do so. If I am right, it should be there.

Sir John Simon: In view of what I said just now I ought to add that my friend and Mr. Howard have been kind enough to let me see what has been read. I agree that there is a record apparently of the Mansion House Association of some such opinion having been given. I should, of course, accept that without any question.

4540. *Mr. Clements (To the Witness):* I think you said a few days ago in the majority of cases the siding owner pays the same rate as the trader who uses the station?—Yes.

4541. I think you qualified that this morning in answer to Mr. Jepson, who put it to you, that there were thousands of siding agreements allowing for rebates to the trader?—Yes, there are a large number of agreements; but if you exclude colliery sidings and quarry sidings—and those I have not had in mind in anything I have said—if you exclude those I am confident that on the North-Eastern, at a very large majority of the sidings we have, we have no rebates either under agreement or under the Order of the Court.

4542. I understood that you were speaking generally; not only as regards your own railway, but for the railway companies generally?—Yes, but I cannot speak with quite the same confidence.

4543. I thought not?—But I believe, and I have made some inquiries, that what I say if it is not true to precisely the same degree is true in fact—that is to say, that at the majority of sidings a rebate is not paid.

4544. Of course, you would not suggest that a siding owner prefers to pay what he is not obliged to pay?—No; I would not say that of anyone.

4545. Do you not think that those cases arise from the fact that the agreements were made before the Rates and Charges Orders were passed?—The majority will be undoubtedly.

4546. Before in fact there was any process by which the siding owner could enforce a claim for rebate?—There were rebate cases before the Act of 1894.

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4547. Yes. But I think you will agree with me that accounts for a great many of the cases where a siding owner pays the same rate as the trader who uses the station?—I do not think I would like to admit that without more knowledge than I have now.

Mr. Clements: Then I will not press that any further.

Mr. Jepson: Is it not the fact—you will know from your experience, Mr. Clements—that prior to the date of which you are speaking, the Rates and Charges (Order Confirmation) Acts, all the siding rates were in the station rate-book?

Mr. Clements: I am not able to say whether they were entered in the station rate-book as siding rates. My impression is they were simply rates —

Mr. Jepson: At that period there was only one book kept, and the station rate-book contained all the rates to and from sidings near to the station. That has come out many times in the Railway and Canal Commission Court.

Mr. Clements: I think you are referring to a time when they began to have two rate-books.

Mr. Jepson: No, before the time when they began to have two rate-books. There was only one station rate-book which contained all the private siding rates.

4548. Mr. Clements: That would be before the passing of the Act of 1902, but they would not be entered in the rate-book, I imagine, as a siding rate, that would be the rate which applied whether the traffic went to the station or to the siding. Now, Sir Alexander, the cost of constructing the private siding and its connection with the railway company, and all incidental expenses connected with the signal boxes, are paid by the trader, are they not?—It depends on the particular agreement in each case. In the majority of cases that would be so, I think.

4549. I think I might use your words and say in the great majority of cases?—I dare say so. I do not think the practice of the different companies has been uniform in that matter.

4550. Equally, the cost of maintaining those sidings is borne by the trader?—Inside his own boundary I should think almost invariably; outside it would be a matter of agreement.

4551. As a rule, the agreement, I think, provides for his paying the whole of his expenses of maintaining the connection and the signalling, and so forth?—I think so, as a rule. That would be quite a common thing at any rate. I am not sure how it stands on the notes; I do not want to be taken as saying that all these agreements were entered into before the Act of 1894. We shall have a number of fresh siding agreements like every company every year; in the majority of cases, even to-day, when we make an agreement for a siding we are able to persuade the trader it is a fair thing that he should pay the station rate.

4552. I should differ from you there, but you agree that in a number of instances before the passing of the Rates and Charges Order, a number were entered into?—Yes.

4553. I think you agree in many cases the siding owners' traffic could not be accommodated or dealt with at the station?—I have said so, several times.

4554. I suggest to you, again, in a very great many cases?—You take a big manufacturing centre like Middlesbrough, where the traffic is, you may say, necessarily all siding traffic. Every works in Middlesbrough has its siding, that is in the nature of things.

4555. Quite. The railway companies are not bound to extend their station accommodation in order to meet the requirements of a trader?—No, I do not think they are.

4556. I think you in connection with another point referred to the leading case of that matter, the *Hasting's Case*?—I have not referred to it, but I remember the case very well.

4557. Where it was held that the jurisdiction of the Railway Commissioners in the matter of facilities only extended to the railway station in existence at the

time?—Yes, there was no power, I think, to make the company expend further capital.

4558. In a good many cases a railway company would be unable to extend its station accommodation from other causes?—That might very well be the case.

4559. In all those cases I suggest to you that the provision of the trader's siding is a very great advantage to the railway company, because it gives them the great benefit of the siding owners' traffic, and relieves them of the cost of providing any additional accommodation, any station accommodation at all. Would not you agree with me?—Yes, I think so. I think I admitted that previously.

4560. I am sorry?—I meant to.

4561. It is not a new proposal, is it, that the sidings' owner should not pay for what he does not have. I have endeavoured to show that it is a very old one?—No, I suppose every rebate case that has been brought, right back from the case you quoted of Howard, would be all on that footing, more or less.

4562. I ask you that question because I am not able to reconcile your attitude now with what appears in the book which you wrote a good many years ago, to which I should like to refer and put to you. I am not endeavouring to trap you, you quite understand that?—No, I made some reference a day or two ago about deprecating going back to Noah's Ark.

4563. Unfortunately, we are forced into that position, otherwise I could agree with you. It is so excellent and seems to me to express sweet reasonableness so much that, with the leave of the Chairman, I should like to read the passages.

Chairman: Very well.

4564. Mr. Clements: This is "Maximum Railway Rates," by Sir Alexander Butterworth. It is dated 1897, and I find that Chapter 4 is headed, "Siding Rebate." After setting out the Section of the Act of 1894, Sir Alexander says, "Meaning of Rebate. Railway rates being fixed in accordance with the general requirements of senders and receivers of the various classes of traffic, and including charges in all classes for some, and in the higher classes for numerous 'services' (including in that terms the provision of accommodation) outside mere 'conveyance,' it sometimes happens that a company's rates become in their entirety inapplicable to cases where the company do not render all the services which are charges for in the total rate. The practice of making, in such cases, a deduction from the ordinary charge obviates the multiplication of rates, and the allowance of rebate thus affords a ready and flexible mode of adapting existing rates to special circumstances." Then there is another provision, which Sir Alexander heads, "Its connection with Disintegration of Rates." Then, after referring to that, he says, "These obligations may be enforced in some cases by an action for the recovery of overcharges, in others by complaint to the Commissioners, but where the substance of a complaint is that the rates charges for a particular trader are too high, having regard to the services rendered, the ground of complaint may often be removed by the company making the complainant a deduction from their ordinary rate; in this sense the allowance of rebate may be regarded as a legal mode of relief, and has been so recognised by the late Commissioners." Then the last passage I shall trouble you with is headed "Proportional Principle." "Where the rate from which a rebate is claimed is less than the maximum (i.e., less than the sum of the maxima applicable to the case) it becomes necessary, if the rate has not been disintegrated by the company, to decide how much of the total rate represents a charge in respect of station terminals or service terminals. It has been said that in such cases what is called the 'proportional' principle is *prima facie* a reasonable principle to apply—that is to say, in the absence of evidence it may be assumed that each constituent of the rate has been reduced pro rata, so that each item of charge will bear the same proportion to its maximum that the total rate charged bears to the sum of all the maxima. Thus, if the total rate which a company can charge for certain traffic passing between two stations is 20s.

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(the maximum station terminal applicable to such traffic being 1s. 6d. at each end), and the total actual rate is 20s., it would, according to the 'proportional' principle, be assumed that the rate included a charge of 1s. for station accommodation at each end." I do not quarrel with any of that, and I only ask you, is there any difference in principle between the allowance of a rebate and the charging to a trader of a net rate, that is to say, a rate exclusive of station terminal charge?—I am sorry, I do not follow your question.

4565. It was this, is there any difference in principle between allowing a private siding owner a rebate from a rate, which includes a station terminal charge, and charging the siding owner a rate from which the station terminal charge has previously been deducted?—No, it seems to be the same thing.

Mr. Clements: I thought so.

Mr. Jepson: Except this, you will agree if the company has a claim for services at or in connection with sidings that would be an additional charge on the traffic.

Mr. Clements: I quite agree.

Mr. Jepson: That was one difficulty we felt when the position was being argued out a few days ago. The services accommodation provided at the various sidings are so variant that you could not fix an all-round sum. The charge that the companies could justify would be different at almost every siding, and therefore if it was to form part of the rate to be charged to the public you would have to set out somewhere the charges in respect of 5,000 or 10,000 sidings up and down the country.

Mr. Clements: No doubt you will have difficulty in reducing it to a tariff, and the circumstances of the siding would have to be considered.

Mr. Jepson: I did not think your question was a fair one when you asked if there was no difference between the two. It occurred to me that there was a big difference in this respect. When you charge a station rate and allow a rebate, that rebate has been fixed after due consideration of the circumstances, and it is said to be fair and reasonable between the parties. If you are going to take off the station rate as shown in the new standard rate book, or the tariff on the tariff rates, you are minus something, and, that something has to be found. That minus has to be found and added.

Mr. Clements: In each of those rates the charge for conveyance would be the same for the same distance.

Mr. Jepson: You are not only dealing with the charge for conveyance in your charge, but with the sum of the conveyance and the terminal.

Mr. Clements: Quite. The charge for conveyance being the same and easily ascertainable, the result is a matter of determination.

Mr. Jepson: You have to find it somewhere before you can charge it. Where are you going to find it?

Mr. Clements: Do you mean out of whose pocket are you going to get it?

Mr. Jepson: Where are you going to find recorded the exact amount chargeable in respect of a particular private siding to add to the conveyance?

Mr. Clements: I should not care as a siding owner whether I got it by a rebate or a net rate.

Mr. Jepson: You said, is it the same thing? I do not think it is the same thing.

Mr. Clements: I am still of opinion it is the same in principle and I cannot carry it any further than that.

4566. Then I think it was Mr. Acworth who suggested that it was arguable that a railway company should be entitled to charge something for having a station ready for use if it was wanted?—I dare say. I quite agree with that. That is really part of my case.

4567. So I understand. Do you not in effect get such charges now, something that takes their place at all events. I mean to say, do you know any single case where the siding owner has succeeded in recovering the whole of the proportional rebate which he

claims?—No, I do not think there is a case. I think it has been always held that there is something on the other side in the nature of a set-off or counter-claim.

4568. Apart from Section 5, there are certain matters connected with the station terminals which I think you will find the siding owner often has to pay some charge for. I will give you an instance?—I am not sure I follow you. Is not that because the station terminal covers certain services which are rendered for that?

4569. Some services which may be rendered under the head station charges?—Yes—I do not remember whether it was Mr. Acworth or not, I understood your question to refer to something else, a payment not in respect of services that were rendered, but a payment in respect of having the opportunity of having them rendered if the trader so desired.

4570. Perhaps I have not expressed myself clearly. What I thought I put to you was that in effect you get a charge which amounts to the same thing, or which at all events is a compensation to you for having the station charge?—I do not think we are directing our minds to the same thing. As I understand it, station terminal covers half a dozen things, provision of the station, a certain amount of clerks and shunting—say six items. I understand you to say that no siding owner has succeeded in getting a rebate of the whole. I imagine that in all cases, 1, 2, or 3 of those 6, he has availed himself of and has to pay for those obviously. I think the question that was raised previously was something different from that, whether apart from the services of which he did avail himself, ought not he to contribute something for having the station ready for him if he liked to use it?

4571. I quite understand your point, and all I am putting to you is that I think he does get something which is equivalent to that charge. I was going to cite the case of Portway, I think it was, as showing the sort of thing. It was Portway v. Colne Valley and Halstead Railway Company, and was an application for private siding rebate. The Court found that in respect of the applicant's siding traffic the railway company did not provide the accommodation or render the service, or any of them for which station and service terminals were chargeable, but they rendered certain other services in respect of that traffic, namely, some clerking, shunting and signalling. Some of those matters, I think, might come under Section 5 and others would come under the Section authorising the station terminal charge. However, it is not a big point, and I will leave it there having cited that case?—You will quite understand that I am not purporting to lay down what the law is, all I am saying is, whatever the law is, I suggest this ought to be the practice in the future.

4572. I understand that to be your attitude. I hardly like to repeat what Mr. Balfour Browne said, wherever the law is against you wish to have it altered. I think you said and complained of it as being rather unfair that the siding owner used the station when he saw fit?—Yes, that is so.

4573. Is not that due very largely, if not entirely, to the fact that railway companies as a rule, and certainly in their siding agreements, refuse to carry less than a certain quantity to and from the siding?—It would be accentuated by that fact, it will not be due entirely to that, but that is a fair retort as regards a number of cases.

4574. You will agree it is largely due to that?—I did not refer to that part of it.

4575. You will remember Section 12 of the Rates and Charges Order?—About minimum quantity?

4576. Which give the railway company the right to charge for a reasonable minimum load for the traffic taken from the sidings?—Yes.

4577. I believe in one of your instructions books I have heard referred to certain minimum loads prescribed in respect of traffic to and from private sidings according to the class of traffic?—I think that is so.

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4578. My submission to you is that those matters account largely, if not entirely, for the fact that the siding owner sometimes uses the station?—I only say not entirely.

4579. Now I want to ask you one or two questions about the Act of 1894. Several times, I think, in the course of your evidence you referred to the Act as panic legislation?—That had reference to Section 1.

4580. It struck me as being rather a strong expression.—If it is unparliamentary I will withdraw it.

4581. I am going to put this to you. The increase in rates and charges that immediately gave rise to the passing of that Act came into operation on the 1st January, 1893?—That was so.

4582. The report of the Select Committee who were appointed to inquire into the complaints that were made is dated December, 1893?—I had forgotten.

4583. To all intents and purposes a year afterwards the Act itself received the Royal Assent on the 25th August, 1894. Do not you think that there was ample time for anything in the nature of a panic to subside, even if only a panic in the minds of the members of Parliament dealing with the subject?—The subsiding of panic depends on the size of the mob. A single man gets rid of his panic soon. It was a big mob in a panic, and they took a long time to cool.

4584. True. At any rate, there was a considerable time for cooling off. I think it is the fact that no Conference or Committee of Enquiry has recommended the repeal of the Act of 1894?—No; it has been criticised in detail.

4585. I know you ask for that very strongly.—Yes.

4586. I put it to you, so far as you can recollect, there has been no Committee of Enquiry.

Chairman: There is a suggestion of substituting something else which makes a great difference. The Act of 1894 may be necessary to protect the trader at a time when the railway company is at liberty to increase its rates, so long as they remain below the maximum, but if every increase of rates is to be subject to a tribunal, in any case the need for the Act of 1894 has been very greatly removed.

Mr. Clements: I should submit—I do not wish to argue it now—that the trader has a better protection under an Act of Parliament than he possibly could have by a tribunal.

Chairman: The Act of 1894 only sends the Railway Company to a tribunal to justify its increase.

Mr. Clements: In certain circumstances.

Chairman: Your proposal is that he should go to a tribunal in every case practically where he is going to make an increase. There is a difference in the test, perhaps. If you wish to speak of that I shall not check you. The difference in test is whether the railway company has to justify the increase or merely to justify the rate as being reasonable.

Mr. Clements: Of course, there is a great difference there, but the value of the Act is that it is a limitation upon the tribunal, as Sir Alexander pointed out, but not in the sense in which I am using those words. It is a limitation of the tribunal against the upward tendency of rates. To that extent is it a protection to the trader.

Chairman: Sir John Simon has agreed that it would be proper, whenever a railway company does propose to make an increase, that the onus should be on the railway company of justifying the new rate. The only point that is at issue between the trader and the railway company is whether it should be expressed that the railway company has the onus of justifying the increase or the railway company has the onus of justifying the rate.

Sir John Simon: Some traders have agreed it ought to be a question of the reasonableness of the new rate.

Mr. Davis: I suppose when Sir Alexander talked about legislation by panic it was 1893-4, when the traders came into power into the House of Commons; that is what you mean by panic legislation?—If the phrase has given offence to anyone I do not want to repeat it.

Mr. Davis: I think you are right, though.

4587. *Mr. Clements:* Then you need not mind?—I lay much more stress on what the Chairman has just said. It is only in the event of Parliamentary Statutory maxima being retained that we ask for the repeal and to have no substitute. We say, if you want to perpetuate that method of limitation and that method of control, we think we ought to be as we were in 1893, before the Act of 1894. We ought to have freedom in fixing our charges within those maxima. In that sense we ask for the repeal of the Act, but we are not asking for the perpetuation of that system. We are asking for the abolition of maxima, and if that suggestion is adopted, then, from our point of view, it is merely to fix up the best machinery and best method of controlling us in making our increases. I feel certain myself that the Act of 1894 will be repealed, because you will have some machinery altering it in some way, and you will not repeat the words in this Act. Surely that is a matter of detail, not principle.

4588. There is a great gulf between us, because the traders I represent ask for the tribunal and the Act as well?—As regards that, if you succeed in having your way and having the maxima—well, you tear up the Act; do not have us both ways. Restrict us by maxima, and give us freedom within those maxima. That is what obtained before 1891 and between 1891 and 1893. If, on the other hand, we have our way, and you do not have yours, I do not think there is anything in substance on the Act of 1894. We say there must be some machinery to control us in our increase; to give the traders the opportunity of objecting, we think we can suggest better machinery than the Act of 1894. That is all I meant.

4589. I understand your answer. I have one final question upon this. We had got as far as this; no conference or committee has suggested the repeal of the Act. Not only is that the fact, but do you happen to know that a Committee that sat as recently as 1911, namely, the Departmental Committee on Railway Agreements and Amalgamations, not only did not propose to repeal the Act, but proposed to extend its scope. I should like just to give that reference, if I may, because I think it is important. The first, second, and third of the summary of conclusions of that Committee are these:—“(i) That it should be provided that, where a facility or service is diminished or withdrawn, it should lie upon the railway company to show that the reduction or withdrawal is reasonable; (ii) that it should lie upon the railway company to justify a charge made for a service hitherto rendered gratuitously; (iii) that it should be declared that the law with regard to increased charges applies to passenger fares and other charges made for the conveyance of traffic by passenger train.” I do not propose to take up time by reading the paragraphs of the Report giving the grounds for those conclusions, but those paragraphs are paragraphs 85, 86, 87, and 88. It will be found there this Committee thought it would be a good thing to apply the machinery which applies where a rate has been increased to these other three matters to which I have referred.

Sir John Simon: It is hardly improving the Act of 1894, but to give further cases where there is to be a check.

Mr. Clements: I refrained from reading the paragraphs because I did not wish to take up time, but I have given the references.

Chairman: I think no Committee has suggested the repeal of the Act of 1894. There has been a Bill introduced, presented by Mr. Marshall Stevens and supported, as I understand, by a good many people here present, which proposes the repeal of the Act, no doubt substituting other clauses.

Mr. Clements: Something very different.

Chairman: Still, they propose the repeal of that Act.

Mr. Clements: If one reads the whole of the Bill, one sees that must be so.

Chairman: I think so; it is the same case now. You would repeal the Act if you wanted to substitute something you thought better.

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Mr. Clements: That, I think, certainly anybody would do.

Chairman: You and Sir Alexander are at one. You are not quite at one as to what you substitute.

4590. *Mr. Clements:* The traders ask that they shall have the Act and the tribunal as well, so that in their view it is not a substitution. I will pass from that. This is only for the purpose of drawing attention to one or two cases on this question of cost and justification of an increase by proving increase of expenditure. I understood you to say, when you were being asked questions on the question of justification, that in practice, at all events, if not on the proper construction of the Act, the only justification of an increase of rate was proving an increase in the railway company's expenses?—That is my reading of what has been done under the Act.

4591. I think it is substantially what you said. I wish to point out and I will leave it there, Sir Alexander, because it is the only way I have, that I do not think that is quite correct. As one sees there is nothing in the wording of the Act of 1894 that suggests that an increase of rate would be justified by an increase of expense, but there are several decisions of the Railway Commissioners which show that other things may be considered. If I may, I will briefly mention them. There is the case of *Rishworth, Ingleby and Lofthouse, Ltd., and Others v. North-Eastern Railway Company*, where complaint was made of an increase of rate, and the defence was the rate had been increased in *bona fide* obedience to the Order of the Railway Commissioners in another case for the purpose of getting rid of an undue preference. Would you like the references?

Chairman: Yes.

Mr. Clements: It is reported in 12 Railway and Canal Cases, page 34. Then, the *North Staffordshire Collieries Owners v. the North Staffordshire Railway Company* and some other railway company. There it is quite clear from referring to the judgment in the Court of Appeal that the justification was that the rate which had been raised had previously been reduced to meet the necessities of the trade, and after the trade had improved again the rate was raised, and the Court seemed to hold that that was reasonable. There was something said about a question of increase of expenses.

Chairman: The case you quoted just now, I have Finney's Statutes, is dealt with in this way: "Quere, whether Section 1 applies to an increase made in *bona fide* obedience to an Order of the

Court against undue preference." He seems to throw some doubt on it.

Mr. Clements: Is that the Rishworth case?

Chairman: Yes.

Mr. Clements: I do not know whether the learned Judge expressed some doubt about it; at all events, the railway companies succeeded on that ground.

Sir John Simon: Had not they other points, too? I entirely agree with Mr. Clements so far as the practice of the Court is concerned. It has been the view commonly taken that a railway company, when it is directed to an undue preference, may do it by putting up a lower rate or putting up a higher one, and if it puts down the lower one, that may be a good answer when there is a complaint of increase of rates. That is undoubtedly the view taken by the Court.

Mr. Clements: There are some references to a case which I think is important, The North Staffordshire Collieries Owners' case, and the dicta of the learned judges is reported on pages 124, 125, 126 and 129. There was one other case.

Mr. Jepson: I think the railway companies in that case also argued that they were adjusting inequalities in again advancing the North Staffordshire coal rates to Birkenhead. They were putting them on a proper equality with rates to Birkenhead from other colliery districts.

Mr. Clements: I do not remember if it is so at the moment.

Mr. Jepson: I think you may take it from me that it was so.

Mr. Clements: There was only one other case which is interesting for two reasons. That is *Grace Low and Company v. Great Central Railway Company* and other railway companies, and is reported in Volume 13 of the Railway and Canal Cases, page 282. Mr. Justice A. T. Lawrence's observations will be found at pages 285 and 284. That is the case in which the learned Judge said to the railway company, You may justify the increase complained of in any one of a score of methods. It is true the learned Judge did not go on to particularise those matters, but that was the observation he made. It shows that in the mind of that Court, at all events, the railway company were not confined to proving increase of expense. The other reason why that case is rather interesting is that it answers an inquiry which you yourself put a week or two ago. It is a case in which an individual increase of rate has been brought before the Railway Commissioners for decision. That is the double reason I had for mentioning that. I am obliged to you, Sir Alexander.

Cross-examined by Mr. MORTON.

4592. I shall be extremely brief, but there is one point on which I want to ask you a question. I understand that you hold that certain preferential rates which exist should be maintained, and absolute uniformity cannot be got at in the rates?—Preferential in the sense of being below scale, below standard?

4593. Yes.—Yes, we think that will be the result of any enquiry.

4594. There are certain preferential rates in existence now which should be continued?—One deprecates a little the adjective you are using. We are accustomed to use preferential in another sense. Would you say "exceptional"? We are so accustomed to use "preferential" in the sense of unduly preferential.

Re-examined by Sir JOHN SIMON.

Sir John Simon: Now, Sir Alexander, it seems to me, has performed the operation of re-examining himself for the most part.

Chairman: I think so.

Sir John Simon: I do not, therefore, want to spend long about it. If it was thought to be convenient to the Committee, there are two or three compartments he has dealt with, but I should be rather glad in a few questions to put it together now, because we have been over the whole ground.

Chairman: Either in a few questions or by making a statement.

4597. *Sir John Simon:* I have had the opportunity of seeing Sir Alexander during the adjournment, and I know there are one or two matters we should like to be clear about in the face of the tribunal. May I take first of all the topic which my friend Mr. Whitehead dealt with so very clearly in some questions he put this morning. Let me remind you how my friend put it. He was speaking for the Iron and

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Steel Association and he was asking whether or not you thought it would be convenient and practicable to submit to the Iron and Steel Association some stated tariff for iron and steel for their consideration. You remember he raised that point?—I remember quite well.

4598. That at once raises two or three very important practical matters. First of all I understand railway companies certainly could not do it now at this minute?—No we could not. We have not the data.

4599. It is clear, is it not, that it must be the railway companies and not the traders who ascertain what this suggested tariff should be, because the tariff must be the result of averaging under a weighted average all the operations of the company in dealing with this commodity?—That is so.

4600. I do not see how the traders on their side could put forward the right tariff?—The tariff has to produce a revenue. I will put it to reproduce a revenue, and the traders would not know what the revenue was to reproduce.

4601. I think we must accept it that if that is to be done the burden of producing a skeleton tariff, even in a single commodity and it may be a single railway company, in the first instance does fall on the railway company and its advisers?—I think it must. If the traders say it we have to criticise it, but they could not do it right.

4602. We are bound to say that is the first step. I do not want the Committee to misunderstand. I know and you know that a great deal of work has been done by way of surveying the ground, but as you have said matters are certainly not in a situation where anything can be produced at this moment?—That is so.

4603. Let me take the next point. It may I suppose turn out, it probably will turn out, that the tariff line which would be deduced by a railway company from its own experience may possibly be a rather different line according to the railway company that you happened to choose for analysis?—That is so, we cannot be sure that it would work out the same for all companies. That is one of the things we have to find out.

4604. In that respect when you are dealing with all these suggested tariffs it is a more complicated problem than dealing with class rates as we know them now, because class rates for practical purposes are maxima?—True.

4605. They do differ but we know how much they differ?—Quite.

4606. But when you take the charges of one railway company actually quoted and plot your line, it does not follow that the line will coincide with that another company would draw from its experience?—That is so.

4607. I want to see what chance there is of helping in the way Mr. Whitehead suggests. He was suggesting iron and steel, taking that as the class of commodity. Suppose a single railway company did it, like the North-Eastern, I do not know whether you are able to tell the Committee—it seems to me they might like to know—what length of time from now would be needed to produce that formula I called it, confining yourself to the single article and a single company. I do not know whether you have that information or have formed an estimate?—We have not information as regards any single article at the present moment, but if we were to put our staff on to one article with a view to doing that as rapidly as possible, it would vary very much with the article, I should think it would be a matter of weeks.

4608. A month?—It might be a month.

4609. I want the Committee to have information that they may estimate how much time they have to play with. It seems to me that is what you need to know. I think you agree it is a very practical thing for the Committee to know?—Indeed, the time at disposal is of the essence of the whole of this part of the question. Undoubtedly you can get lines to submit to traders in time, but it is bound to take a very considerable time. You ask my view taking one article.

4610. Yes, and one company?—Each company would have to do it for itself and then the companies would have to go through the process of putting their heads together and trying to get a combined line. We could get a line for an article, the one Mr. Whitehead is interested in, I should think in a month.

4611. That gives the Committee a view as to that.

4612. *Chairman:* Suppose you had to prepare a number, would they be 50 consecutive months or could the two interlap with each other?—It depends entirely on the staff you can take off ordinary duties, and put on to this one job. The great part of the work can only be done by those who are expert in rates.

4613. Suppose the Ministry adopted the principle that there were to be tariffs, and said to the railway companies, "Produce the number of tariffs you think necessary," probably about 30. Within what limit of time could the railway companies, without destroying their own business, fairly produce the whole lot of tariffs?—You will understand that you would get that information much more authoritatively from the goods managers, but I should not think it would be practicable. If I am wrong in what I say, I will try to take steps to have it corrected by to-morrow morning. I should not think it would be practicable to have what I call our first shots ready, which means shots based on data, before the end of the year. If you will let me, I will make a point of asking the goods managers.

Chairman: If you please.

Sir John Simon: One gentleman behind me confirms what Sir Alexander has said, and he says he thinks he would want from 6 to 12 months.

Chairman: That is a very important element.

Sir John Simon: We are a little in the dark, the Committee is at present also not sure as to how much time the Committee has to play with. We feel it our duty to show the Committee the minimum time necessary if we are to undertake the task.

Chairman: It is very important, because we have to advise the Minister. If we tell the Minister that a thing is possible if he gives enough time, and impossible unless he gives it, it will be for him to decide whether, having regard to the urgency of getting the matter settled at once, he will adopt one course or another.

Sir John Simon: Following on that, one must conceive the possibility that the Committee in those circumstances, or the Minister, might say: It is extremely urgent that without delay there should be a revision of rates, and I will sooner have a revised basis of percentages which can be produced quickly and postpone the more elaborate and scientific method.

Chairman: Parliament will have to get through an Act of Parliament next Session, 1920 to 1921, to secure the position from the time the Minister's powers cease. Parliament can, of course, pass, it has been called permanent here, one that is intended to deal with the matter on a final basis at present, or adopt an interim arrangement with instructions that preparation should be made for the final arrangement at a later date. Parliament will have to legislate next year if justice is to be done, because the Minister's powers cease in February.

Sir John Simon: What appeared to me as necessary, and indeed our duty from the railway point of view, was to give this information about the time we thought was wanted, because it occurred to us that you might require to report on this branch of the Enquiry fairly promptly and conceivably would have to indicate that choice.

Chairman: I think it is valuable that you should give those indications as to time.

4614. *Sir John Simon:* It is necessarily an estimate, but it is the best we can do. Now may I take this? When you get to that stage that you have a tariff or formula ascertained by you and your experts for a given railway company in regard to a commodity, it is only then as it seems to me that the matter could be usefully submitted, let us say, to Mr. Whitehead's clients?—I think so.

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4615. Here I am going to ask my friend a question, if I may, rather than yourself. When that time arrives, and we submit it to the iron and steel people, our tariff line, of course it will become apparent that there will be a large number of traders who at present are to be found just below this line, but who will be brought up into the exact orbit of the new curve?—No doubt that is so.

4616. No doubt others will come down, and it is possible that the whole lot at the same time will be moving upwards, so that in the result what will happen will be that while there is a general upward movement, some traders will find that they are being moved proportionately rather further up than others?—Yes. You have to keep the two movements separately in your mind.

4617. What I want to know from Mr. Whitehead, if he can tell us, and I think it is important to the Committee to know, is this: we do not want to have over again the misunderstanding, I will call it, that arose between 1891 and 1894?—We must not have a second panic.

4618. We will not say whether it is panic legislation or not, but we do not want to have the traders, who feel that the new system has involved an additional rise to them, turn round and saying sooner than have this we would scrap the whole business and begin where we were to start with. That is a very material thing for us to know?—It is vital; it goes to the root of the matter.

Mr. Rowland Whitehead: Obviously the point my friend has put is a very important, practical point, and it is a matter of practice and testing by those persons who are directly in it. My clients will consider the point most carefully. It is for that reason we want to bring these matters to what we call the practical test of thrashing them out.

Chairman: It will be no use if you wait until then.

If we have got to the stage that Parliament has passed an Act of Parliament that this is to be done, and with a view of arriving at the figures the railway companies are invited to meet the traders, then it will not do for the traders to say, "We wish that Act of Parliament had never been passed."

Mr. Rowland Whitehead: Whatever happens, of course we shall see, the traders will have to be bound by any decision Parliament came to. I do not think my friend wants me to say now what view any particular trader could take if his rates were raised in anticipation of an ultimate scheme. What he suggests to you, I understand, is this: what view would an individual iron and steel manufacturer take if, when Sir Alexander's datum line is fixed, he finds that will involve his being raised upward? That seems to be a question for direct personal negotiation and discussion at the time when we know the facts.

Chairman: Is not the question this: Can you say or not, and it may be you cannot answer, whether the traders would accept an average line, the traders as a whole, or on the contrary would it merely result in those who benefit accepting it with enthusiasm and those who lose it by refusing to have anything to do with it?

Mr. Rowland Whitehead: Unfortunately my client is not in the room, therefore I do not like to answer a question of that kind on my own responsibility. I will say this, my client will consider it most carefully. They will see the notes, and be able to deal with the matter when it arises.

Chairman: It arises every time you discuss the question of averaging rates.

Sir John Simon: I agree with my friend, and I think it is only right that he should say he cannot answer this in his character of advocate for a great branch of industry. It is obviously a matter for his clients to instruct him about, but I do think we are entitled to know, because if we undertake this business it is a terrific task. I think that we are entitled to know from the Iron and Steel Association: are we to understand that if we draw this line and discuss what is the proper line with them that then the

association, with all the force it has behind it, is prepared to back up the application of that line, or are we going to find that the members of the association who will be just below the line will repudiate the line and say, "We want to go back to where we were before"? We must know that.

Mr. Rowland Whitehead: Obviously that point shall be very carefully considered.

Sir John Simon: Perhaps my friend will be able to get some instructions.

Mr. Abady: May I ask this: Is it proposed to apply this system of averaging to other classes of traffic than iron and steel?

Sir John Simon: Certainly.

Mr. Abady: Am I concerned? If so, one would like a similar opportunity.

Sir John Simon: I would like my friends to consider the same thing. If there is going to be some 30 intermediate strata, so that we express it in the form of a tariff or formula, these important classes of commodities, grain, groceries, manure, iron and steel, chemicals, and what not, this is a common question for everybody. It is no good the railway companies spending months—it may be more than months—in arriving at these weighted averages unless when it is arrived at the people who are just below the line are willing, for the sake of simplicity and consistency, to come up to the line because the people above the line will be coming down.

Mr. Abady: Coal is in a class by itself. The point is you want to do away with the exceptional rates.

4619. Sir John Simon: We have to do it all along. We want to state in a large class of commodities, rather similar to present classes in the form of further classes, a standard rate of charges. That is a matter we must have clear. I do not know what is the traders' view?—Yes, coal is rather different from other commodities. I do see that. It is essential that we should have an understanding almost from the first whether we are on common ground.

Chairman: Parliament can force it on people. They will say, "We have so many tariffs, and everybody within 5, 10, or 15 per cent. of those tariffs shall fall into it."

Sir John Simon: That was not the history of 1894. What happened there was—I do not want to put it controversially—that owing to changes in the classification, railway companies had the greatest difficulty in calculating whether existing charges would pay their way, and they protected themselves in a way we are familiar with and that created a great outburst.

Mr. Clements: For practical purposes, from 1894, statutory maxima, in the sense they were established in 1891, did not exist any longer. There is another subsidiary purpose they served, but the clear purpose, to range up and down so long as you did not go above them, was stopped. We do not want to have all that over again.

Mr. Thomas Major: May I ask whether that would be a proper question to ask after reclassification was discussed, say, some considerable time later on?

Chairman: I do not think reclassification will make a difference. What the railway companies are telling us is that it is not worth while spending months and taking their men off their ordinary work to prepare a list of tariffs, if they are going to be thrown back at their heads and told, "We have no use for anything of this sort."

4620. Sir John Simon: Or so many of our constituents reject it that we as an association cannot support it. So that we may be plain with our friends here, because they are aiming at solving a common problem, as I follow you, and, as Mr. Whitehead made clear from his side, no doubt there would still remain cases which would be so far away from the tariff line that they would not be attracted into the tariff line itself, but they would still stand outside it?—We feel confident of that, that there would be such cases.

4621. I do not mean, of course, the exceptional exceptional rates in some other commodity, but in

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the same commodity?—I mean that—in the same commodity.

4622. Have you formed any view professionally as to what is the kind of rule that is likely to have to be applied to determine whether somebody who is just off the line comes into it or maintains an independent existence. What is the kind of test you have applied?—Amongst the rates that are living rates under which traffic has passed recently, or would have passed if the times were normal, I can only think of taking some sort of percentage tariff from a centre line. I cannot think of any other way of approaching it.

4623. You say, for example, once having ascertained your tariff or formula, that anybody who is being charged at present rather less, but not more than 10 per cent. less, must come up to it?—Yes, those would be the lines one would work on, I think.

Sir John Simon: I want my friend, Mr. Whitehead, and his clients to consider that.

4624. Mr. Acworth: Would you ask Sir Alexander what he thinks the nine per cent. man who is pulled right in will think as compared with the 11 per cent. man who keeps his old rate?—You are up against those troubles.

Mr. Acworth: You have to give an answer somehow.

Sir John Simon: It is all involved.

4625. Mr. Acworth: That is a pretty serious practical point?—You could conceivably taper the figures.

4626. I suggest to you you would have to do something of the kind?—You are quite right.

4627. Sir John Simon: If I follow one answer you gave the other day—I am asking for my own information as much as for the Committee's—you said analysis showed that a very large percentage in weight—I think you mentioned a figure of something like 47 per cent.—That was the figure.

4628. Was, as a matter of fact, to be found quite a long way below your average figure?—Yes. I believe that was the figure on the diagram.

4629. A very cheap rate is in practice found to be associated with the passage of very large quantities?—If you find one of these stars a long way from the line, if it is up in the skies, it is rather unimportant, but if it is down in the depths, you will find there is a good deal of traffic passing at that rate.

4630. It is the people who are down in the depths that we are going to give a lift to?—That is so.

4631. I do not know whether you could help the Committee on this at all. I do not want to press you unduly. We have spoken of iron and steel and you have shown your diagram, so we know a good deal of work has been done on it?—The diagram was pig iron.

4632. Yes, pig iron from two stations?—Yes. I only mean that there are a great many iron and steel rates besides pig iron.

4633. You are perfectly right. I do not know whether the work which has been done on pig iron by way of testing and trial is a fair specimen of the work that has been done on a range of other commodities, or whether the instance we gave was probably further advanced than what we have done on some other commodities as things are now?—Do you mean whether we have collected more data?

4634. You say, "Give me a month and I will give you the iron and steel rates." Supposing somebody said, "Do not take iron and steel but take grain"?—There are a good many articles we have not touched.

4635. It is a fact that there are a good many articles which have not been touched at all?—I feel sure that is so.

Sir John Simon: We have done our best to show you the kind of period we want and we will do everything we can to help you, but it must be understood that we are not recommending this course lightly. We want to point out the difficulties inherent in carrying it through.

4636. Chairman: I want to emphasise again what impressed me particularly, and that is that exceptional rates would not matter much if the only

object was uniformity. Uniformity is not of such overwhelming importance that we need make a very great sacrifice for it, but I was very much impressed by Sir Norman Hill's evidence, and what we have heard before at another inquiry, with regard to water competition and coastal traffic and canals. We have been assured that water transit is in the most serious danger if the exceptional rates which were brought into operation by water competition continue to exist. We formed the opinion, rightly or wrongly, on the previous occasion, that we could not pick out exceptional rates created by water competition from the others without starting an inquiry into each rate, which was too long to be feasible. If we are, therefore, to get rid of the exceptional rates which are in competition with water transport we must do something of a sweeping nature. That is to me personally the urgent point in regard to getting rid of exceptional rates, and why I am very anxious that there should be found a means by which we can get rid of all exceptional rates which are not now justified. Sir Alexander has been telling us what he would do with regard to those which he thinks are justified, and how he would go to work to deal with them. Although it may be a difficult and long matter to deal with exceptional rates in the way he has spoken of, I think there is a very big question behind it, if we are to maintain water transport in existence at all, and I think it is very much to the traders' interest that water transport, though it may not be very important to-day, should be kept in existence, with a view to future use being made of it by them when it is again very efficient?—May I ask as regards that for our information whether your apprehensions have reference to a normal future or to the immediate present?

4637. Chairman: You must not take my opinion because it is an opinion which has no weight, but my own view is that it will be some years before water competition is again a serious competitor with the railway companies, but that, in the course of some years, it would be again a serious competitor. There are other people who take different views. Some people say it can practically never be again a serious competitor, having regard to the cost of labour. Others would probably take a shorter period than I have suggested when it would be an active competitor. We must be on the look-out for all three alternatives?—What those I have consulted in the railway world are not clear about is whether there is anything in the nature of things which will permanently alter the relative positions of the two modes of transport as regards the item of cost. We do not understand really why, seeing in normal days water was a great deal cheaper than land transport, in the future, after the present abnormal conditions cease to obtain, those positions should be reversed. That is what we are not clear about.

4638. Speaking for myself, and therefore it is not an opinion which has the weight of experience about it, I should have said that that sort of matter was dependent upon how far human labour is involved. You can compare one country with another in this way—India with this country, for instance. The cheapness of labour will make one industry successful in one country and a different industry in another. The present experience is that the cost of human labour has largely increased, and very many people think that is a permanent state of things. They say it may be that it will render canal competition—separating that from coastal competition for the moment—almost impossible. Coastal competition, if I were again to state my own opinion, I should have expected, with the improvement in machinery on ships and the improvements of machinery in handling goods at the docks, would more or less revive?—You mean because wages form a larger portion of their costs than in the case of railways?

4639. Yes.—I understand.

Sir John Simon: I quite follow that you are only putting it as a speculation; but what you are putting

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would apparently depend, would it not, on whether the wages bill per ton conveyed by canal is larger or smaller than the wages bill per ton conveyed by railway?

Chairman: Certainly that would be one of the tests.

Sir John Simon: I do not know whether I might not, in the form of questions, indicate two or three distinctions which I know have occurred to the railway companies; I do not want to argue them, but to state them merely. The first point I would like to state for this Committee's consideration under this head is this. We must distinguish, must we not, between the policy which ought to be followed in order to give sea transport its fair chance of reviving and coming into competition again, as being a totally different thing from a policy which is designed to secure that the railway companies shall not compete with sea transport? Those two things are quite different.

Chairman: I notice your point entirely.

Sir John Simon: They are utterly different. I have myself very great difficulty in following the logic of some of the cases put by Sir Norman Hill and my friends. The difficulty I have in my own mind is this. I understand that their case is that at the moment railway rates enable traffic to go by rail so much more cheaply than it could be carried coastwise by sea; that the sea trader is out of it. That may be a very good reason for saying, "Well, the sea trader ought to be given a chance to establish himself again," and I do not suppose the railway companies, as such, have any objection to charging rather more than they charge now. As such they certainly have not; but the real question is, is a railway company going to be left hereafter free to quote a reduced rate in future, in view of the fact that there is effective water competition? That is the real question, I think.

Chairman: Sir Norman Hill would have liked, and Sir Robert Aske put it for him also, to say that the railway company shall never again reduce their rates by reason of water competition. I do not think anybody who was here during that part of the case watching the general attitude of this Committee would think very much support was given to the view. I have not taken the opinion of the Committee, but I should only judge by the general feeling.

Sir John Simon: I did nothing more than observe the faces of those present; they were impassive.

Chairman: It is certainly a totally different problem whether the railway companies should now quote rates which would be somewhat in excess, but not much in excess of what the water carriers charge, and it would be a different question that they might never put them back if the water carriers put down their rates.

Sir John Simon: It is a very important distinction in many directions quite apart from the simple case one is thinking of now. You will find, I am pretty sure—and Mr. Jepson can give you information from his great technical knowledge of the matter—that there are a great many railway rates in the country which may be said to be as low as the cost of water competition, which is not quite the class of water competition which has been contemplated.

Chairman: You mean the competition between two ports in England when the goods come from across the sea?

Sir John Simon: Yes.

Chairman: American goods coming to Liverpool and American goods coming to London. *Prima facie*, if, for instance, you are trading with a place in which the carriage from Liverpool to London is the same, they would all go to Liverpool, being a shorter sea route, but if there is a long railway haul they would prefer to go to London to save the railway haul.

Sir John Simon: Let me give an illustration on the same point. I think this is one which arises in the practice as it was before the War. Take the goods which come from the Continent to Europe, which went ultimately across the Atlantic. There is a large part of that trade which reaches our East

Coast ports, Grimsby and Hull, or wherever it may be, and is then taken by train from these East Coast ports to Liverpool or Manchester, and then goes on board an ocean-going steamer. It is quite possible to send those goods round the island by ship to Liverpool.

Chairman: Or across the Atlantic without touching this country at all.

Sir John Simon: Yes. It is in the interests of this country's trade, if you look at it broadly, that they should, as a matter of fact, make the cross-country journey. It is good for everybody. It probably also means that they are delivered quicker. I am speaking without the book; it is merely an illustration which has come into my mind. The railway rate from those East Coast ports to Manchester or Liverpool, I apprehend, has been made a low rate in order to encourage that mode of transit. It is by no means true, if you were to cut that rate out of the book on the ground that it is low because of water competition, that you would do any good to anybody except, it may be, some line of steamers, British or foreign—quite possibly foreign—which would take on the whole job. That is the class of instance.

Chairman: Yes.

4640. *Sir John Simon:* Is not that so, Sir Alexander?—Yes; it is an excellent illustration.

4641. *Chairman:* All this seems to fall on the line that our only possible way of dealing with exceptional rates is to give a limit of time within which those that are desirable should be maintained, and to put the general proposition that all the others, which are not maintained because the railways and the traders think it is desirable, either with or without the tribunal, accordingly as is desired, that they should not be maintained, should be swept away. I cannot see that there is a possibility of saying that every rate must be separately examined as to its merits. The advantage of the proposal that these are to be maintained which are agreed to both by the railways and the traders is that the bodies deciding whether they are to be maintained or not would be split up. Instead of having to go to one body to get an answer to the question, each railway company's goods manager would be a separate tribunal for investigating the case and would investigate a case with which he was already in the habit of dealing with traders who were themselves well informed instead of having to try to inform the mind of strangers who know nothing about the circumstances. However, I still want to emphasise that the question with regard to these rates which are in competition with water, is an urgent point. Sir Joseph Broodbank said that coastwise traffic is to some extent reviving. One of the reasons which Sir Norman Hill himself told us as a difficulty in the earlier stages, was that some of the coastwise ships have gone to undertake Continental traffic. It may be the question is not as urgent as some people think. On the other hand, Sir Norman Hill told us, even if the railway rates were all brought up to what he classed as normal, that would only give the water a dog's chance, so that he is a bit dependent about it. I hope the position is a great deal better than that, but it comes back to the point that there is an urgent reason for getting rid of the exceptional rates.

Sir John Simon: If one were to regard these water competition rates so far as there is not contemporary sea competition as being obsolete, and endeavour to get rid of them under the general head of getting rid of obsolete rates, defining obsolete rates in some fair way, the only thing that matters from our point of view is that it should be laid down quite without question that we shall be at liberty afterwards, when the competition arises, to quote a lower rate. A railway company, has no interest whatever in charging too little when there is no competition.

Chairman: I have not consulted my colleagues, but I can say that I have heard no opposition from them to that proposal.

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Sir John Simon: That seems to us to be quite vital. The only other thing which would matter about these obsolete rates, which you can define as rates, which are not justified by immediate circumstances, is this. I do not think the railway companies ought to be in a worse position to justify the lower rate if it is complained of as undue preference, when they reduce it again, if they do, than they would be now. I can imagine the railway company being in a strong position if it keeps a low rate in its books; though at present it is not being used or is not perhaps justified, but hereafter it may be a justifiable rate. If we are to sweep that out of the rate book, and put in the higher rate now; and then if water competition springs up or other reasons arise which would justify us in putting a lower rate, we ought not to be in a worse position to justify our low rate.

Chairman: Do you think you would be? You would go before the tribunal, either the Railway Commissioners, or the new tribunal, and would say to them: "We propose to put down the rate between Hull and London because the steamship service is so efficient and so cheap."

Sir John Simon: That is one very important factor. I am saying these things not out of my head, though I dare say Sir Alexander thinks I am, but we had an opportunity of some discussion yesterday evening. Sir Alexander was not able to be there, and those points were two points which were pressed very much upon me, and I was asked to mention them to you. Sir Alexander will very likely have his own view about them. I do not wish to tie him down. It was suggested for consideration that in getting rid of obsolete rates, or rates which are not in the present circumstances justified, there would be every desire to help, but it really must be quite clearly upon that basis, because otherwise the offer of the railway companies to remove a rate from its books, and put in a higher one, would really mean that it is giving *carte blanche* to its competitors for a time.

Mr. Davis: Referring to your description of the goods coming into this country, and then afterwards being exported to other countries, some of that traffic is intercepted, and English exports go with it.

Sir John Simon: Quite.

Mr. Davies: On the point of emigration and immigration the same thing holds, that is to say, Germans and Poles and lots of people come, to get to America or elsewhere more readily, through England more than by any other way.

Sir John Simon: That is so. A second instance of the same sort which I would like the Committee to have in mind, because these are very big questions, is the case of the rates between Southampton and London. There is a certain amount of traffic which comes round to Southampton and is got to London. No doubt, it is quite true that the rate between Southampton and London in many cases may be a low rate. I expect it is because there is always the alternative of the ship going round to the Thames.

Mr. Martin: I think there is a rate of 5s. a train load from Southampton to London, but you are overlooking one point. What the trader for many years past has been complaining of is the preferential rates given on foreign goods sent into this country in direct competition with goods coming from some other ports. It is to the interest of the railway companies to bring their goods through their own docks. The consequence was we have had in this country for years now preferential rates to all big centres and big towns in England. It was done by a combination of water rate, and also by a combination of rail rate and certain charges at the docks being given up. It is well known to everybody. It does seem to me, if the railway company wants to reduce a rate, we ought to be more certain that that is not done in order to give the preference to the imported foreign goods against English goods. There, I think, the difficulty would be met if it were as necessary to go to the tribunal to get a lower rate as it would be

to get a higher rate, because the trader would have an opportunity of going into the question and seeing that there were none of these ulterior motives, if I may say so, underlying the railway companies' application.

Sir John Simon: I follow.

Mr. Martin: I think that is an important point which one must bear in mind.

Sir John Simon: You have in mind, though I quite see the practical importance of what you say, that what the present law is designed to do is to check that by complaint of undue preference. It is a perfectly good ground for complaint.

Mr. Martin: We have always had an opportunity of complaining of undue preference, but we have only had the Railway Commission to go to. Traders in years gone by have put a stop through the Board of Trade and partly through the railway companies to those sort of cases of foreign preference, but when we came to a point so as to make headway, the railway companies turned round and said, "No more of this. If you want to stop this or complain of it, you must go to the Railway Commission." That was the very thing the traders were largely wanting this new body for, so that we could have a cheaper means of going to the new tribunal than the Railway Commission.

Sir John Simon: I have at present not apprehended why it should be cheaper. I should have thought exactly the same people would appear before it and in exactly the same way; but I have no objection to going before another tribunal.

Mr. Martin: Well, at any rate, the only means of getting redress being by going to the Railway Commission has stopped a tremendous number of complaints being made, as one firm was asked to take up a matter which is going to cost £2,000-£3,000, to carry it through for the benefit of the other portion of the trade. It is a hardship.

Sir John Simon: You will appreciate that. I am only anxious to follow it, but I do not understand, with great respect, how the cost is said to come in. Is it supposed they pay any portion of the railway companies' costs in the matter because they do not?

Mr. Martin: No, but when you are fighting railway companies, railway companies do not stop at expense. They have the finest Counsel they can possibly get in the country to fight their cases.

Sir John Simon: I do not know about that.

Mr. Martin: Traders must do it too if they can.

Sir John Simon: I do not know that they will necessarily change their Counsel because there is a change of tribunal. That is all I say.

Mr. Martin: I was hoping that in this tribunal we shall not see so many of these Counsel as we do in an ordinary case.

Sir John Simon: There might have to be some more exceptional exceptional rates.

Mr. Martin: I am quite clear on one point, that if that tribunal is going to give the same facilities to the railway companies appearing by Counsel, I do not hold out any hope that there will be a shortening of the proceedings. I was hoping it would be more of a business tribunal where we should deal direct with the railway managers and others who know their business as traders.

Sir John Simon: I would be the first to recognise the importance of the distinction between a lawyer and a business man. But I have not hitherto heard that it is any part of the traders' case that the essence of a business tribunal is that the case should not be presented by a lawyer.

Mr. Martin: I am not saying it should be entirely so, but I think at the back of the minds of the trader the idea is that it shall be a simple means of procedure and short and for it to be called together quickly. That is really what it amounts to.

Sir John Simon: That is a very important point. *Mr. Acworth:* Might I ask you to cast your mind back to the time when you used to appear at Chambers? Do you think a business tribunal would have quite as many appearances in Chambers and applications for adjournments and on questions

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whether you can strike out an interrogatory and so forth?

Sir John Simon: You are referring to the Commissioners' Court.

Mr. Acoorth: Yes. Do not you think a business tribunal might take that kind of thing more shortly?

Sir John Simon: Might I ask, do you mean there would be less justice or more justice?

Mr. Acoorth: That is a question I should not in the least like to answer, but I suggest to you it may very possibly do rough and ready justice. I think it would be ready; I do not know whether it would be rough, but I want to know what you think.

Sir John Simon: Honestly, I have not myself at any time had any very large experience of that particular part of legal business, but I should have thought that there were not a great many. I suppose some method of getting an answer on oath will be necessary in order to find out in advance what the case is. Lawyers not being business people call those interrogatories; no doubt business people would call them answers on oath, but is there any other difference?

Mr. Acoorth: Well, I am not going to give evidence, but I have my doubts.

Mr. Davis: What is the good of setting up another tribunal if it is exactly the same as what exists already, or if it takes as long and is as costly as the authority which we have in existence? We are going from the frying pan into the fire, are not we?

Sir John Simon: If I am to answer frankly, I think myself, if I might be permitted to say so, that the argument that a new tribunal, and what is called a business tribunal, is going to be very brief and short is a double fallacy. In the first place, it assumes that the Railway and Canal Commission is a very long technical procedure. I do not think that anybody who has actually sat and heard a case there will say that. One has heard enormously important interests disposed of in the matter of an hour or two, and quite rightly. I do not myself think it is so, but if the question is going to be decided, I shall be much interested to see whether the new tribunal takes a longer or a shorter time. So far as my own experience goes, arbitrations, which are a favourite form of business award, do not take a shorter time, but take quite as long a time as the Courts of Law.

Chairman: Was not it the idea in 1875, when the Railway and Canal Commission was set up, that it should do these very things which it is now being suggested a business tribunal should do?

Sir John Simon: I think so.

Chairman: It was to be a business tribunal.

Sir John Simon: I do not want you to misunderstand me. I am not retracting in the least from the view which Sir Alexander has affirmed, that the railway companies are quite prepared to see a tribunal, which perhaps has largely the same personnel as the tribunal which I am now before, continuing to deal with the necessary questions of revision of the list of rates so as to ascertain from time to time is that a reasonable charge, is the railway company right in saying it ought to be more; is the trader right in saying it ought to be less. That does give continuity. I can imagine that tribunal being extremely valuable and doing extremely good work, but that is a wholly different question from the proposition that undue preference is going to be decided in five minutes by any tribunal.

Mr. Davis: Could not the tribunal do 50 per cent. of its work with greater speed than the old authority, while the contentious matters more particularly would take longer? What I mean is, I am not going, in so far as I am a member of this Committee, to assent to a tribunal if it is the same thing over again.

Sir John Simon: Quite so.

Mr. Davis: We must have some profit out of it.

Sir John Simon: I quite see that. There is one matter which I feel bound to mention specially. I do not propose to re-examine about the statutory maximum, and the Act of 1894, and so on, because the matter is thoroughly in the minds of the Committee, but there is one point I am bound to mention specially, and I would like to put it in this way. You were good enough to put forward for our consideration a diagram, which showed how the Scottish statutory rates at certain points diverged widely from the English companies. That was a most useful table. The reason we have not dealt with that specifically with Sir Alexander in giving evidence is that really that is only an illustration; and though, of course, it is a very important illustration, it is rather a simple illustration of divergencies which exist as between one English company and another; and, indeed, between different parts of one English company. You appreciate, therefore, it is not simply a Scotch v. English problem. There are five Scotch railway companies which are represented here by the Railway Companies Association, and they have been in communication with those instructing me whilst Sir Alexander has been giving evidence. I think it is my duty to tell the Committee that the view of the Scotch railway companies is this. They are not seeking to give evidence about it, but they wish me to tell the Committee they find themselves in strong agreement with the view that has been expressed by one or two of the Scotch trade witnesses. They are disposed to think that some temporising expedient to get over the difficult period which we are now in is really to be preferred to an attempt to make a final settlement now. I am bound to tell you that because that is perhaps not what you have gathered from the general trend of Sir Alexander's evidence. They do take that view. They also want this understood. As far as they are concerned, they would hardly be able to take part in fixing the actual scale of rates, until they know whether they are to do it on the basis that they are five Scottish companies as units, or upon the basis that there is one Scottish group. If there is one Scottish group, until they know whether it is merely for administrative purposes that they are grouped, or whether there is to be a pooling arrangement as between the companies, they cannot do it; or lastly, whether they are to do it on the assumption that this or that Scottish company is to be married to some English company. The actual practical proposal of the rates which would be charged would appear to be affected by the answer to those questions.

Chairman: I have no personal information, but the newspapers state we shall know more about that on the 24th June.

Sir John Simon: I have noticed that. I did not know whether you have any information?

Chairman: I have no information.

Sir John Simon: I am very anxious to do justice to our Scottish friends here, as they are very good in trying to help to present the case as a whole. To do justice to their view I think I ought to add this. When I say that the Scottish companies would favour the view that there should not be a final decision now, but that some temporising expedient should be adopted, one of the reasons which operates in their minds is not only the reasons which Mr. Morton and other Scottish witnesses gave, but a feeling that the whole final settlement of Scottish railway rates and expenses is bound at present to be so far abnormal that it would have to be considered apart altogether from any question which could be decided by fixing rates. They have very special reasons for urging that there should be some temporising policy so far as they are concerned.

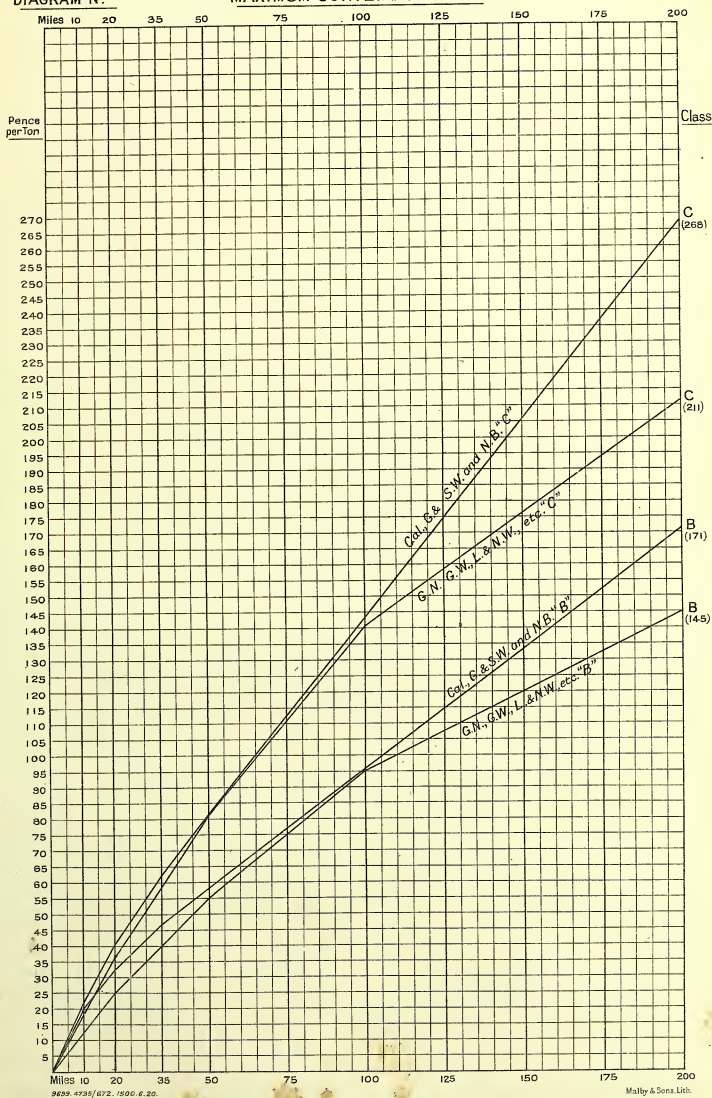
Chairman: There is nothing more you want to ask Sir Alexander?

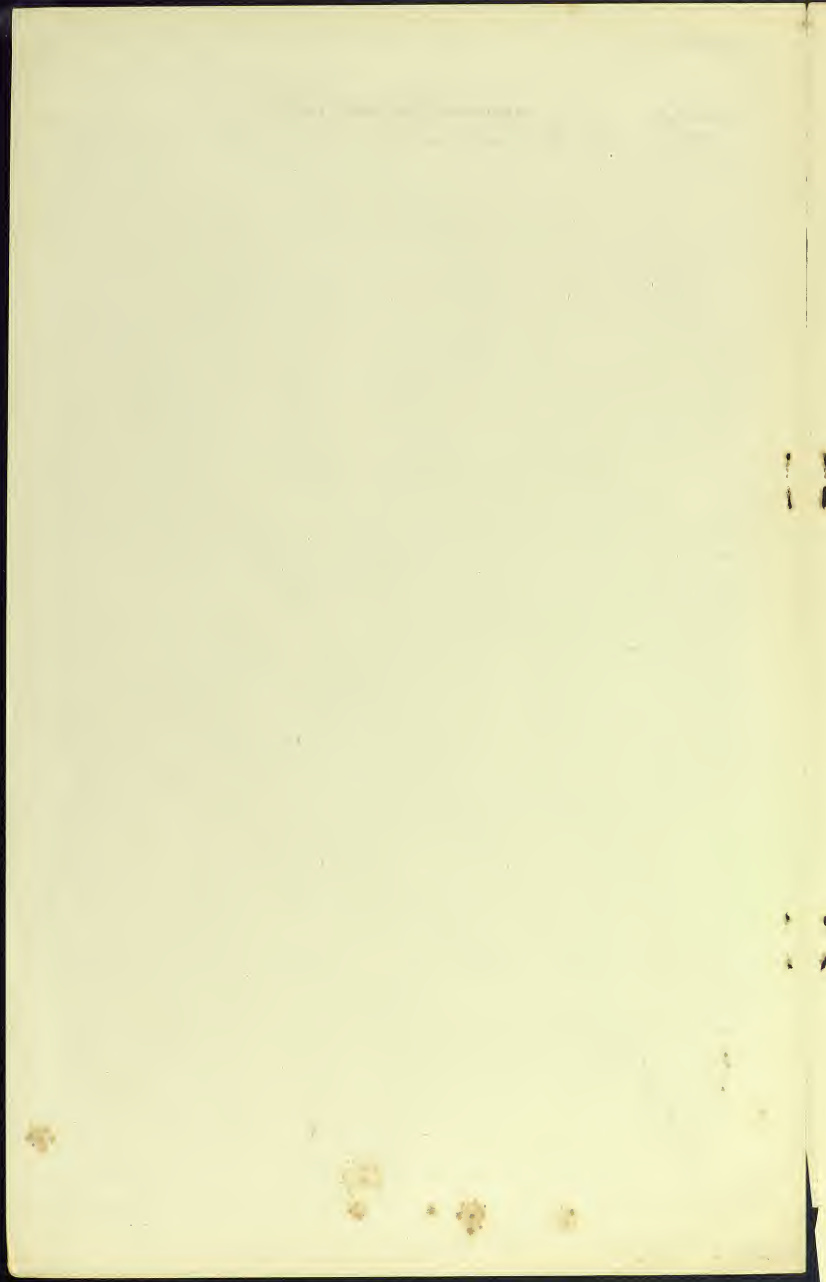
Sir John Simon: No. I could easily ask him about a number of topics, but I would prefer not to.

Chairman: I think he re-examined himself, as you said. You do not wish to call any other witness at present?

DIAGRAM N°

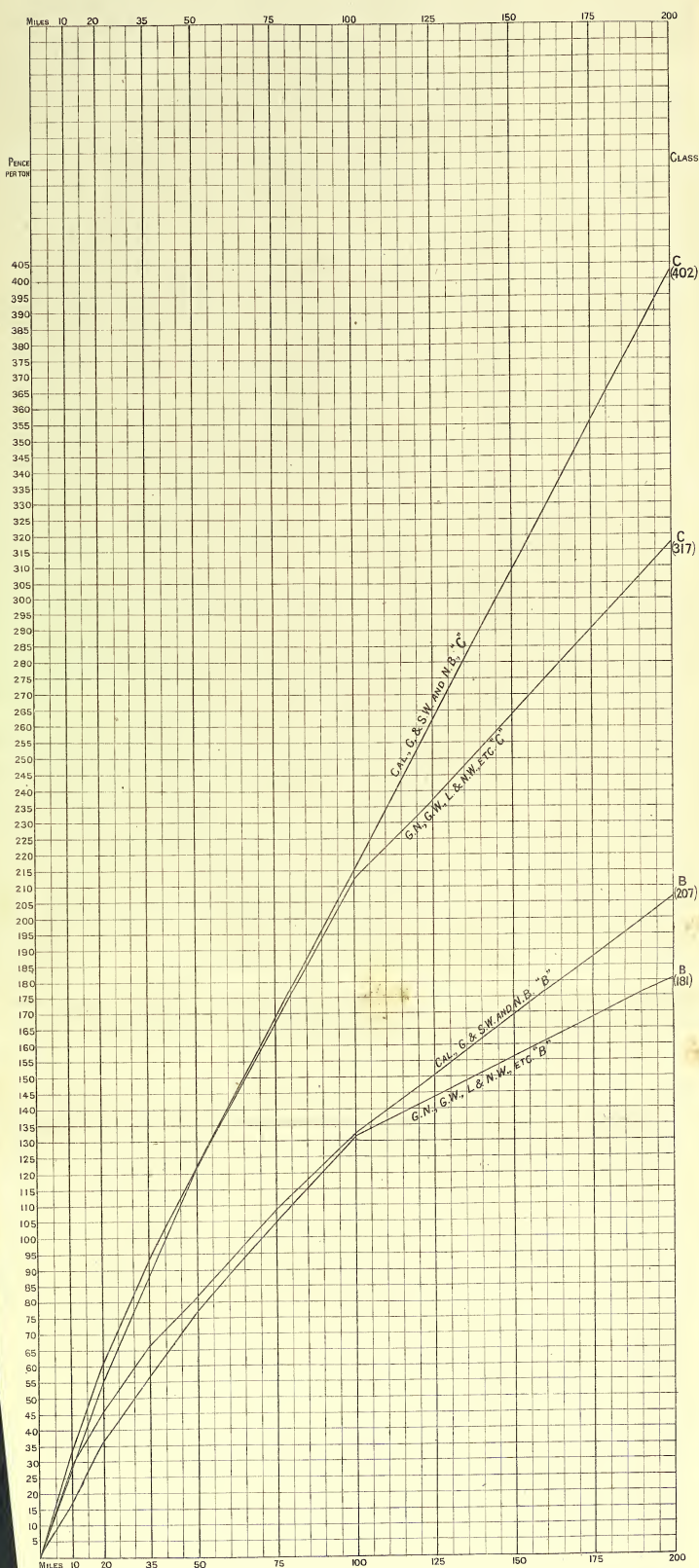
MAXIMUM CONVEYANCE RATES

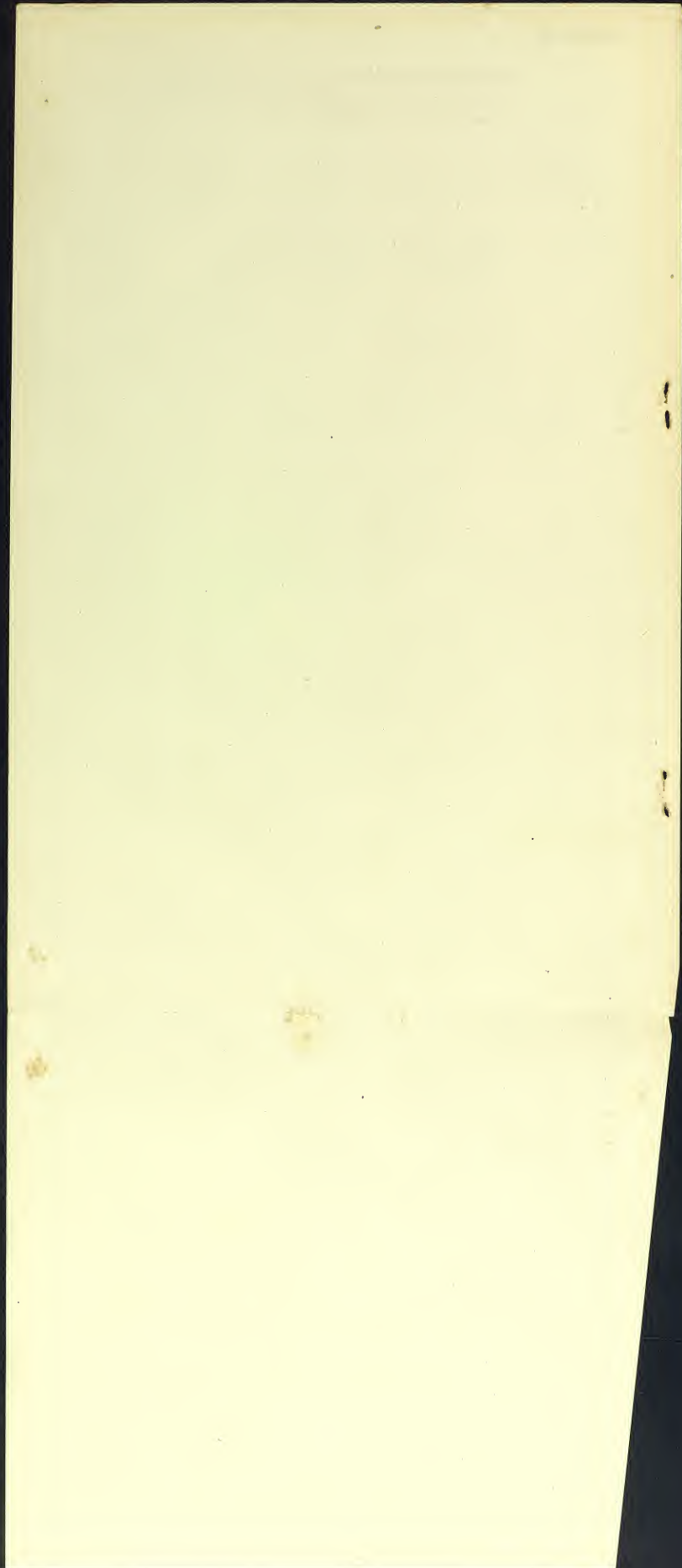




MAXIMUM CONVEYANCE RATES, PLUS 1920 INCREASES

(For the purpose of this diagram the flat increases have not been included but effect has been given to the operation of the minimum and maximum increase on Class "B")





15 June, 1920.]

SIR ALEXANDER KAYE BUTTERWORTH.

[Continued.]

Sir John Simon - No, we must get on with our very elaborate work.

Chairman : To-morrow we will take the St. Helens and Widnes Manufacturers' case first. I think you told us it would not be very long.

Mr. Rowland Whitehead : About three-quarters of an hour.

Chairman : Then the Central Chamber of Agriculture, the National Federation of Fruit and Potato Trades Association, Limited, the Chamber of Horticulture, and the National Farmers' Union. I do not know how far they will fit in together, but I hope they will to a considerable extent.

(The Witness withdrew.)

(Adjourned till to-morrow morning at 11 o'clock.)

